EDITOR'S NOTE

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85-1378

No. 85-1379

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

Charles A. Bowsher, Comptroller
General of the United States,
Appellant,

v.

Mike Synar, Member of Congress, et al.,
Appellees.

On Appeal from the United States
District Court for the District of Columbia

APPENDICES TO JURISDICTIONAL STATEMENT

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February 18, 1986

APPENDICES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE MIKE SYNAR, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant,

UNITED STATES SENATE,
SPEAKER AND BIPARTISAN LEADERSHIP GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES,
COMPTROLLER GENERAL OF THE UNITED STATES,

Intervenors.

Civil Action No. 85-3945

NATIONAL TREASURY EMPLOYEES UNION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant,

UNITED STATES SENATE,
SPEAKER AND BIPARTISAN LEADERSHIP GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES,
COMPTROLLER GENERAL OF THE UNITED STATES,

Intervenors.

Civil Action No. 85-4106

Alan B. Morrison, with whom Katherine A. Meyer was on the brief, for plaintiffs in No. 85-3945.

Lois G. Williams, with whom Gregory O'Duden and Richard S. Edelman were on

the brief, for plaintiff in No. 85-4106.

Richard K. Willard, Assistant Attorney General, with whom Joseph E. diGenova, United States Attorney, David J. Anderson, Branch Director, United States Department of Justice, Neil H. Koslowe, Special Litigation Counsel, United States Department of Justice, and Douglas Letter, Harold J. Krent, Robert E. Kopp, Leonard Schaitman, Judith Ledbetter, Lee Sarah Liberman, Lori Fields and Richard Greenberg, Attorneys, United States Department of Justice, were on the brief, for defendant United States of America.

Michael Davidson, Counsel, United States Senate, with whom Ken U. Benjamin, Deputy Counsel, United States Senate, and Morgan J. Frankel and John C. Grabow, Assistant Counsel, United States Senate, were on the brief, for intervenor-defendant United States Senate.

Steven R. Ross, General Counsel to the Clerk of the United States House of Representatives, with whom Charles Tiefer, Deputy General Counsel to the Clerk of the United States House of Representatives, and Michael L. Murray, Assistant Counsel to the Clerk of the United States House of Representatives, were on the brief, for intervenor-defendant Speaker and Bipartisan Leadership Group of the United States House of Representatives.

Lloyd N. Cutler, with whom Harry R. Van Cleve, General Counsel, United States General Accounting Office, James F. Hinchman, Deputy General Counsel, United States General Accounting Office, Robert P. Murphy, Attorney-Advisor, United States General Accounting Office, John H. Pickering, William T. Lake, Michael S. Helfer, Daniel M. Drory and Richard K. Lahne were on the brief, for intervenor-defendant Comptroller General of the United States.

Before SCALIA, Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit, JOHNSON, District Judge of the United States District Court for the District of Columbia, and GASCH, Senior District Judge of the United States District Court for the District of Columbia.

PER CURIAM:

Plaintiffs in these consolidated cases challenge the constitutionality of certain features of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1037, popularly known as the Gramm-Rudman-Hollings Act, signed into law by President Reagan on December 12, 1985. The principal issues presented are whether the plaintiffs, Members of Congress and the National Treasury Employees Union, have standing to litigate the points they raise; whether the Act unconstitutionally delegates legislative powers that may be exercised only by Congress; and, if not, whether it confers upon the Comptroller General executive powers that may not constitutionally be given to an officer removable by Congress. We find that plaintiffs in both cases have standing, and that the powers in question may lawfully be delegated, but that the delegation to the Comptroller General violates the constitutionally requisite separation of powers.

I

In the Act, Congress has set a "maximum deficit amount" for each of the fiscal years 1986 through 1991, its size progressively reducing to zero in fiscal year 1991. Section 251 provides that each year the Directors of the Office of Management and Budget ("OMB") and the Congressional Budget Office ("CBO") shall estimate the amount of the deficit for the upcoming fiscal year, and, if it exceeds the maximum deficit amount for that fiscal year by more than a specified amount, shall calculate, program by program pursuant to rules specified in the Act, the budget reductions necessary to ensure

that the deficit does not exceed the maximum deficit amount for that year. The Directors must jointly report their deficit estimates and budget reduction calculations to the Comptroller General. After reviewing the Directors' report, the Comptroller General must issue his own report, containing his deficit estimates and budget reduction calculations, to the President and Congress. Section 252 of the Act requires the President to issue a "sequestration" order containing the budget reductions specified by the Comptroller General. After a prescribed time, the sequestration order becomes effective and the spending reductions included in that order are automatically made. The automatic deficit reduction process for fiscal year 1986 has progressed to the point of issuance, on February 1, 1986, of the presidential sequestration order, which will take effect on March 1, 1986. See Order, Emergency Deficit Control Measures for Fiscal Year 1986 (Feb. 1, 1986).

The Act also provides what might be called a "fallback" deficit reduction process, to take effect if any of the reporting procedures of the above-described "automatic" deficit reduction process are found unconstitutional. Under the fallback process, the report prepared by the Directors of the OMB and the CBO is submitted, instead of to the Comptroller General, to a special joint committee of Congress, which must in five days report to both Houses a joint resolution setting forth the contents of the Directors' report. The joint resolution is then considered under special rules, and, if passed and signed by the President, serves as the basis for the presidential sequestration order under section 252.

Civil Action No. 85-3945, seeking declaratory relief against the United States, was commenced on December 12, 1985 by Mike Synar, a Member of the House of Representatives who voted against the Act. An amended complaint, filed on December 19, 1985, added as plaintiffs eleven other Representatives who voted against the Act. Jurisdiction is averred to exist pursuant to subsection 274(a)(1) of the Act, which authorizes any Member of Congress to bring an action in this court "for declaratory and

injunctive relief on the ground that any [presidential] order that might be issued pursuant to section 252 violates the Constitution."[1]

The complaint alleges that the automatic deficit reduction process, under which the President is required by section 252 to issue a sequestration order implementing the report issued by the Comptroller General pursuant to section 251, is unconstitutional in two respects. Plaintiffs' first contention, briefly and essentially, is that the delegation of power by Congress to the President and other government officials is an unconstitutional delegation of legislative power. Their second contention is that the powers assigned to the Comptroller General and the Director of the CBO, both deemed legislative branch officials by plaintiffs, constitutionally must be assigned to executive branch officials. The Representatives allege that these unconstitutional provisions injure them by (1) interfering with their constitutional duties to enact laws regarding federal spending; (2) causing automatic reductions in their salaries, staff salaries, and office expenses; and (3) causing automatic reductions in a variety of programs benefiting their constituents. They seek a judgment declaring that the automatic deficit reduction process is unconstitutional and that the President is without power, therefore, to order spending reductions pursuant to that process.

In response to the Synar complaint, the United States filed a motion to dismiss on the ground that the congressional plaintiffs lack standing to bring the action. The United States Senate and the Comptroller General moved for leave to intervene as defendants and also filed motions to dismiss on the ground that the Act is constitutional. The unopposed motions to intervene were granted on December 31, 1985.

Civil Action No. 85-4106, challenging the constitutionality of the automatic deficit reduction process on legal theories identical to those presented in the Synar

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[1] Subsection 274(a)(5) provides that any such action "shall be heard and determined by a three-judge court in accordance with [28 U.S.C. § 2284]." A designation of judges to serve as the three-judge district court in this case was made by the Chief Judge for the District of Columbia Circuit on December 16, 1985.

action, was filed on December 31, 1985 by the National Treasury Employees Union ("NTEU"). NTEU, an unincorporated association representing the interests of both active and retired federal employees, alleges that its retired members have been injured as a result of the Act's automatic spending reduction provisions, which have operated to suspend cost-of-living adjustments ("COLAs") otherwise due federal retirees on January 1, 1986, and which will operate to cancel those COLAs and other COLAs due in the future. NTEU invokes the court's jurisdiction pursuant to 28 U.S.C. § 1331 and to subsection 274(a)(2) of the Act, which provides, in pertinent part, that "any other person adversely affected by an action taken under this title, may bring an action [in this court] for declaratory judgment and injunctive relief concerning the constitutionality of this title." By Order dated January 2, 1986, the NTEU suit was consolidated with the earlier action.

Subsequent to consolidation, the congressional plaintiffs and NTEU filed their respective motions for summary judgment on January 6, 1986. The congressional plaintiffs also filed an opposition to the motion of the United States to dismiss their complaint for lack of standing. Thereafter, on January 8, 1986, the Speaker and Bipartisan Leadership Group of the United States House of Representatives, granted leave to intervene as a defendant in the consolidated cases, filed a memorandum of law in support of the constitutionality of the Act.

The United States filed a cross-motion for summary judgment, again contending that the complaint of the congressional plaintiffs must be dismissed for lack of standing but conceding that NTEU appears to have standing. On the merits, the position of the United States is that the Act does not unconstitutionally delegate legislative authority but that the role of the Comptroller General in the automatic deficit reduction process violates the principle of separation of powers.[2]

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[2] The United States has also requested us to declare that the fallback deficit reduction process contained in § 274 of the Act is constitutional. Although we see no reason to (cont'd)

The motions of plaintiffs for summary judgment, as well as the cross-motion of the United States for summary judgment on the merits, are opposed by the Senate, the Comptroller General, and the Speaker and Bipartisan Leadership Group of the United States House of Representatives. Argument on these dispositive motions was heard on January 10, 1986, and the cases taken under advisement. By Order dated January 23, 1986, the Senate and the Comptroller General were granted leave to intervene in the NTEU action.

II

In view of the established rule that "consolidation . . . does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another," Johnson v. Manhattan Railway, 289 U.S. 479, 496-97 (1933); see also McKenzie v. United States, 678 F.2d 571, 574 (5th Cir. 1982), we find it necessary to make separate standing determinations with respect to the plaintiffs in each case under consideration. Moreover, even though the standing of NTEU has not been directly challenged, we must satisfy ourselves that NTEU has standing before we can proceed to consider its claims. Article III circumscribes the power of federal courts, and "[t]hose who do not possess Art. III standing may not litigate as suitors in the courts of the United States." Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 475-76 (1982). Before turning to a particularized analysis of whether NTEU and the congressional plaintiffs have made the necessary showing for standing in their respective cases, a brief general discussion of the applicable principles is appropriate.

While the plaintiffs invoke this court's jurisdiction under the judicial review provisions contained in section 274 of the Act, they concede, as they must, that Congress

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doubt that proposition, the issue simply is not before this court. The plaintiffs have conceded the constitutionality of the fallback process, and the United States — the nominal defendant — has not set forth any claim for relief in its own behalf.

may not abrogate the constitutional limitations imposed by Article III upon the power of the federal courts. See Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979); Muskrat v. United States, 219 U.S. 346 (1911). Article III limits the jurisdiction of federal courts to "cases or controversies," and "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III .... is the threshold question in every federal case." Warth v. Seldin, 422 U.S. 490, 498 (1975). Principles of standing ensure that one who invokes the power of a federal court satisfies this "case or controversy" requirement.

Although the Supreme Court has noted that "the concept of 'Art. III standing' has not been defined with complete consistency in all of the various cases decided by this Court which have discussed it," Valley Forge Christian College, 454 U.S. at 475, the Court has repeatedly recognized that the concept entails certain basic requirements. The first and most fundamental of these is that a party must allege a "distinct and palpable injury to himself." Warth v. Seldin, 422 U.S. at 501. This injury must be a "particular concrete injury," United States v. Richardson, 418 U.S. 166, 177 (1974), which must amount to "a claim of specific present objective harm or a threat of specific future harm." Laird v. Tatum, 408 U.S. 1, 14 (1972). A plaintiff need not await the consummation of a threatened injury in order to have standing; it is sufficient that the injury is imminent. Babbitt v. United Farm Workers National Union, 442 U.S. 289, 298 (1979). The further requirements of Article III standing are set forth in the Supreme Court's recent formulation that "at an irreducible minimum, Art. III requires the party who invokes the court's authority to [show] . . . that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.' " Valley Forge Christian College, 454 U.S. at 472 (quoting Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38, 41 (1976)); see also Allen v. Wright, 104 S. Ct. 3315 (1984).

Thus, at a minimum, Article III requires NTEU and the congressional plaintiffs to show (1) actual or threatened injury, (2) traceable to the defendant, and (3) amenable to

judicial remedy.[3] In analyzing whether they have done so, we must accept as true all material allegations of the complaints and construe them in favor of the complaining parties. Warth v. Seldin, 422 U.S. at 501. We therefore assume, for the limited purpose of the following standing analysis, that the automatic deficit reduction process challenged by plaintiffs is unconstitutional.

A

NTEU contends that it has standing to bring this action because subsection 252(a)(6)(C)(i) of the Act, as part of the automatic deficit reduction process, has operated to suspend payment of annual COLA benefits otherwise due those of its members who are federal retirees. NTEU also complains that, effective March 1, 1986, the presidential sequestration order issued on February 1, 1986 will permanently cancel retirees' COLA benefits for this fiscal year.[4] It claims that these actual and threatened injuries have been and will be caused by the automatic deficit reduction process and would be redressed if that process were declared unconstitutional.

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[3] In the ordinary case, other limitations on standing exist — so-called "prudential" limitations, not strictly required by Article III. One of these that might normally have some effect in the present case is the requirement that the plaintiff be arguably within the "zone of interests" intended to be protected by the statutory or constitutional provision on which he relies. See, e.g., Valley Forge Christian College, 454 U.S. at 475. We disregard these prudential limitations because we think it clear that Congress has, by enacting the judicial review provisions contained in § 274, expanded standing to challenge the constitutionality of the Act to the full extent permitted by Article III. Cf. Gladstone, Realtors v. Village of Bellwood, 441 U.S. at 100.

[4] Subsection 252(a)(6)(C)(i) provides, in pertinent part:

> Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be . . . paid [between the enactment of the Act and the effective date of a sequestration order for fiscal year 1986] shall be suspended until such order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such order provides that automatic spending increases shall be reduced to zero during [fiscal year 1986], the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled.

It is well established that an association such as NTEU has standing to sue solely as the representative of its members, provided that they individually would have standing. Warth v. Seldin, 422 U.S. at 511. There is no question that NTEU's federal retiree members have suffered actual injury by the suspension of their COLA benefits pursuant to the Act, and that they will suffer further injury by the permanent cancellation of those benefits on March 1, 1986, under the terms of the President's February 1 sequestration order. See Order, Emergency Deficit Control Measures for Fiscal Year 1986 1, 4 (Feb. 1, 1986). We conclude that NTEU has made a sufficient showing of injury to satisfy Article III's threshold requirement of injury-in-fact.

We must also consider the question of redressability, i.e., whether it is likely that the relief requested will redress the injury complained of, before a finding of standing can be made. As to at least the second of the injuries of which NTEU complains — the imminent permanent cancellation of its members' COLA benefits by the operation of the presidential sequestration order — it is unquestionable that a judicial remedy exists. If we declare the automatic deficit reduction process invalid, no cancellation of the COLA benefits will occur as a result of that process.[5] Rather, the fallback deficit reduction process established by subsection 274(f) will come into play,[6] and any cancellation of COLAs under that process will require the passage of legislation. The mere possibility that subsequent legislation might produce the same harm for which a judicial remedy is sought is not sufficient to eliminate redressability and hence standing. Cf. Orr v. Orr, 440 U.S. 268, 272 (1979).

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[5] Although the provision for COLA suspensions would survive invalidation of the portions of the Act under challenge here, it cannot be argued that indefinite suspension (i.e., suspension unless and until a joint resolution is enacted) would render our invalidation of automatic cancellation illusory. It is clear from the language and structure of § 252(a)(6)(C)(i)-(ii) that any COLA suspension would extend no longer than one fiscal year.

[6] In light of the existence of the fallback process and the fact that the remainder of the Act, as supplemented by that process, functions as a coherent piece of legislation, there is no doubt that the automatic deficit reduction process is severable from the remainder of the Act.

Because the threatened injury of permanent cancellation of the COLA benefits pursuant to an unconstitutional process may be redressed, we conclude that NTEU has standing to bring its action.

B

Of the three types of injury that the congressional plaintiffs rely upon for standing, briefly outlined above, we need consider only their claim that the automatic deficit reduction process interferes with their constitutional duties to enact laws regarding federal spending and infringes upon their lawmaking powers under the Constitution, in that spending reductions made pursuant to the challenged process will, in effect, override earlier, duly enacted appropriations laws in a manner other than that prescribed by Article I, section 7. In response, the United States contends that this injury is nothing more than a generalized grievance shared by all other citizens and thus insufficient to support standing.

Under the law of this Circuit, which recognizes a personal interest by Members of Congress in the exercise of their governmental powers, limited by an equitable discretion in the courts to withhold specific relief,[7] we conclude that standing exists. Although it is somewhat difficult to reconcile the various cases on congressional standing in this Circuit, and in particular to tell which denials of relief in earlier cases, seemingly for lack of standing, are now to be explained, in light of later cases, as resting upon an exercise of equitable discretion, the cases clearly recognize that specific injury to a legislator in his official capacity may constitute cognizable harm sufficient to confer standing upon him. See, e.g., Moore v. United States House of Representatives, 733 F.2d

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[7] Two judges of the Court of Appeals, including a member of the present panel, have expressed disagreement with this analysis, see Barnes v. Kline, 759 F.2d 21, 41 (D.C. Cir. 1985) (Bork, J., dissenting), petition for cert. filed, 54 U.S.L.W. 3346 (U.S. Nov. 5, 1985) (No. 85-781); Moore v. United States House of Representatives, 733 F.2d 946, 956 (D.C. Cir. 1984) (Scalia, J., concurring), cert. denied, 105 S. Ct. 779 (1985). It has, however, been adopted by several panels of the Court of Appeals and is the law of this Circuit.

946, 952 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 779 (1985); Vander Jagt v. O'Neill, 699 F.2d 1166 (D.C. Cir.), cert. denied, 464 U.S. 823 (1983); Riegle v. Federal Open Market Committee, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). More specifically, our Court of Appeals has held that "unconstitutional deprivations of a legislator's constitutional duties or rights . . . may give rise to standing if the injuries are specific and discernible." Moore v. United States House of Representatives, 733 F.2d at 952 (citing Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977); and American Federation of Government Employees v. Pierce, 697 F.2d 303 (D.C. Cir. 1982) (per curiam)). Put another way, a Member of Congress may have standing where he alleges a " 'specific and cognizable' [injury] arising out of an interest 'positively identified by the Constitution.' " United Presbyterian Church in the U.S.A. v. Reagan, 738 F.2d 1375, 1381 (D.C. Cir. 1984) (quoting Moore v. United States House of Representatives, 733 F.2d at 951).

Applying these standards to the instant case, we conclude that plaintiffs have alleged specific and cognizable injury sufficient to establish standing in their official capacities. The congressional plaintiffs claim that they are and will continue to be injured by the operation of the automatic deficit reduction process because it interferes with their "constitutional duties to enact laws regarding federal spending" and infringes upon their lawmaking powers under Article I, section 7. Accepting as true plaintiffs' allegations, as we must for purposes of determining their standing, the Act unconstitutionally gives to the Comptroller General and the President formal power to amend or repeal appropriations legislation that was lawfully passed, and thus effectively to nullify plaintiffs' votes on that earlier legislation. This claim of injury is "specific" and "discernible"; and it arises out of an interest "identified by the Constitution," that is, a congressional interest in having all laws made in the manner prescribed under the general lawmaking provision contained in Article I, section 7. This interest differs significantly from the more abstract and generalized interest unsuccessfully asserted by

lawmakers in United Presbyterian Church in the U.S.A. v. Reagan, 738 F.2d at 1375, and Harrington v. Bush, 553 F.2d at 190, viz., the interest in preventing unlawful executive enforcement of a statute from "diminishing the effectiveness" of, or "nullifying," past votes on that statute. Permitting lawmakers to assert the latter interest would be tantamount to giving them standing to challenge the lawfulness of all executive action taken under a statute; entertaining the present suit would not.

Finally, we find no occasion to consider exercising the equitable discretion held by this Circuit's cases to justify denial of specific or declaratory relief to Members of Congress. Section 274 of the Act specifically provides for such relief to such plaintiffs, thus eliminating whatever equitable discretion might exist and leaving only the limitations of Article III.

III

Plaintiffs contend that the Act's delegation to administrative officials of the power to make the economic calculations that determine the estimated federal deficit and hence the required budget cuts violates the constitutional provision vesting "all legislative power" in the Congress. See Art. I, § 1. It is strictly unnecessary for us to reach this point, since we hold in Part IV of this opinion that the challenged provisions of the Act are unconstitutional on other grounds. We think it appropriate, however, in light of the injunction of subsection 274(c) of the Act that we "expedite to the greatest possible extent the disposition" of these cases, and in light of the direct appeal to the Supreme Court provided by subsection 274(b), that we depart from normal prudential practice and provide our views obiter dicta. We thereby avoid the necessity that the Supreme Court, if in its judgment the point must be reached, must either proceed without the usual benefit of a lower-court opinion or else delay final disposition by remanding for that purpose.

A

The delegation doctrine is rooted in the principle of separation of powers that underlies the three-branch system of government established by the Constitution. As the Supreme Court stated in Field v. Clark, 143 U.S. 649, 692 (1892): "That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

In the first century and a half of the nation's history, however, the Court uniformly held that challenged statutes did not unconstitutionally delegate legislative power. See, e.g., Federal Radio Commission v. Nelson Brothers Bond & Mortgage, 289 U.S. 266 (1933); J. W. Hampton, Jr. & Co. v. United States, 276 U.S. 394 (1928); United States v. Grimaud, 220 U.S. 506 (1911). As Chief Justice Taft explained in a passage that has become the classic exposition of the governing test, the separation-of-powers principle does not prevent the legislative branch from seeking the "assistance" of coordinate branches; "the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination"; and so long as Congress "lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power." J. W. Hampton, 276 U.S. at 406, 409.

In 1935, however, the Court used the delegation doctrine to strike down portions of the National Industrial Recovery Act of 1933. See A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935); Panama Refining Co. v. Ryan, 293 U.S. 388 (1935). In these cases, the Court concluded that Congress had failed to articulate a policy or set of standards which would serve to confine the discretion of the individuals exercising the delegated authority. See Schechter, 295 U.S. at 541-42; Panama Refining, 293 U.S. at 430. These two cases are the only cases in which the Court has declared a statute

unconstitutional by reason of undue delegation.[8]

In the fifty years since Schechter was decided, the Court has consistently rejected delegation challenges.[9] Nominally, it has continued to apply the same test (as Schechter and Panama Refining themselves nominally applied the same test as J. W. Hampton), scrutinizing the challenged statutes for intelligible standards and statements of purpose which could provide guidance to the officials to whom authority was delegated. See, e.g., Yakus v. United States, 321 U.S. 414, 424-25 (1944); Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 165-66 (1941); Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 144 (1941); United States v. Rock Royal Co-operative, 307 U.S. 533, 574 (1939). Pragmatically, however, the Court's decisions display a much greater deference to Congress' power to delegate, motivated in part by concerns that, "[i]n an increasingly complex society Congress obviously could not perform its functions if it were obliged to find all the facts subsidiary to the basic conclusions which support the defined legislative policy." Opp Cotton Mills, 312 U.S. at 145. In Yakus, 321 U.S. at 425-26, the Court noted:

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[8] The delegation doctrine was also discussed by the Court in Carter v. Carter Coal Co., 298 U.S. 238 (1936). There the Court ruled that a provision in the Bituminous Coal Conservation Act of 1935 which authorized various majorities of coal producers and mine workers to set maximum hours and minimum wages for all miners was unconstitutional. Id. at 311. The Court denounced that provision as "legislative delegation in its most obnoxious form," but the Court's holding appears to rest primarily upon denial of substantive due process rights. Id.

[9] See, e.g., United States v. Mazurie, 419 U.S. 544, 556-57 (1975); United States v. Sharpnack, 355 U.S. 286, 297 (1958); District of Columbia v. John R. Thompson Co., 346 U.S. 100, 110 (1953); United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 542-44 (1950); Lichter v. United States, 334 U.S. 742, 774-75 (1948); Woods v. Cloyd W. Miller Co., 333 U.S. 138, 144-45 (1948); Fahey v. Mallonee, 332 U.S. 245, 250 (1947); American Power & Light Co. v. SEC, 329 U.S. 90, 104-05 (1946); Bowles v. Willingham, 321 U.S. 503, 516 (1944); Yakus v. United States, 321 U.S. 414, 426 (1944); National Broadcasting Co. v. United States, 319 U.S. 190, 226 (1943); Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 165 (1941); Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 146 (1941); Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 397 (1940); United States v. Rock Royal Co-op., 307 U.S. 533, 574 (1939); Mulford v. Smith, 307 U.S. 38, 48-49 (1939); Currin v. Wallace, 306 U.S. 1, 15 (1939).

> It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework. . . .
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> . . . .
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> . . . Only if we could say that there is an absence of standards for the guidance of the Administrator's action, so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed, would we be justified in overriding its choice of means for effecting its declared purpose . . . .

The Supreme Court has endeavored to narrow the application of Schechter and Panama Refining by noting that those cases involved "delegation of a power to make federal crimes of acts that never had been such before and to devise novel rules of law in a field in which there had been no settled law or custom," Fahey v. Mallonee, 332 U.S. 245, 249 (1947), and that Schechter concerned a statute which delegated regulatory power to private individuals, see Yakus, 321 U.S. at 424. These attempts at narrowing the cases, and the Supreme Court's failure to use the delegation doctrine to strike down a statute in fifty years, have led some to conclude that the delegation doctrine is dead, or at least "moribund." See National Cable Television Association v. United States, 415 U.S. 336, 353 (1974) (Marshall, J., dissenting). The Court has continued to use the doctrine, however, in an interpretive mode, finding that statutory texts conferring powers on the Executive should be construed narrowly where broader construction might represent an unconstitutional delegation. See, e.g., Industrial Union Department v. American Petroleum Institute, 448 U.S. 607, 646 (1980) (opinion of Stevens, J.); National Cable Television Association, 415 U.S. at 342; Zemel v. Rusk, 381 U.S. 1, 17-18 (1965); Kent v. Dulles, 357 U.S. 116, 129 (1958). Such cases indicate that while the delegation doctrine may be moribund, it has not yet been officially interred by the Court.

Our analysis of the delegation challenged in the instant cases thus proceeds on the assumption that the delegation doctrine remains valid law, but that its scope must be determined on the basis of the deferential post-Schechter cases decided by the Supreme

Court. We note, moreover, that the mode of analysis applied by the Supreme Court in this field relies substantially upon factual comparison of the delegation under challenge with delegations previously adjudicated. See, e.g., Woods v. Cloyd W. Miller Co., 333 U.S. 138, 144-46 (1948); American Power & Light Co. v. SEC, 329 U.S. 90, 104-05 (1946); Opp Cotton Mills, 312 U.S. at 146; Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 398 (1940). With that teaching firmly in mind, we turn to the arguments raised by plaintiffs.

B

Plaintiffs advance a number of arguments that attempt to establish what might be termed per se nondelegability of the powers at issue here — as opposed to arguments, which we will discuss in the following section, going to deficiency in the standards governing the delegation. Plaintiffs begin by arguing that the type of authority delegated by the Act is "so central to the legislative function" that it may not be delegated. They cite the dictum of Chief Justice Marshall in support of the notion that there exist certain nondelegable "core functions" of Congress:

> The line has not been exactly drawn which separates those important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions, to fill up the details.

Wayman v. Southard, 23 U.S. (10 Wheat.) 1, 43 (1825). The legislative power over appropriations conferred by Article I, section 8, clause 1 and Article I, section 9, clause 7 is said to constitute such a nondelegable "core function," particularly where the delegated authority could affect the functioning of a broad range of federal programs and, plaintiffs allege, would allow "unelected bureaucrats" to "override" portions of duly enacted appropriations laws.

We reject this "core functions" argument for several reasons. First, plaintiffs cite no case in which the Supreme Court has held any legislative power, much less that over

appropriations, to be nondelegable due to its "core function" status. Indeed, in Lichter v. United States, 334 U.S. 742, 778-79 (1948), the Court stated flatly that "[a] constitutional power implies a power of delegation of authority under it sufficient to effect its purposes." Second, judicial adoption of a "core functions" analysis would be effectively standardless. No constitutional provision distinguishes between "core" and "non-core" legislative functions, so that the line would necessarily have to be drawn on the basis of the court's own perceptions of the relative importance of various legislative functions. Finally, if there were any nondelegable "core functions," there is no reason to believe that appropriations functions would be among them. The appropriations power is not functionally distinguishable from other powers successfully delegated by Congress,[10] and is particularly akin to the taxing power, which is similarly derived from Article I, section 8, clause 1 of the Constitution. In upholding a statute which delegated the latter power by permitting the President to determine whether to increase duties on certain articles in foreign commerce, the Supreme Court said:

> It is conceded by counsel that Congress may use executive officers in the application and enforcement of a policy declared in law by Congress, and authorize such officers in the application of the Congressional declaration to enforce it by regulation equivalent to law. But it is said that this never has been permitted to be done where Congress has exercised the power to levy taxes and fix customs duties. The authorities make no such distinction. The same principle that permits Congress to exercise its rate making power in interstate commerce, by declaring the rule which shall prevail in the legislative fixing of rates, and enables it to remit to a rate-making body created in accordance with its provisions the fixing of such rates, justifies a similar provision for the fixing of customs duties on imported merchandise.

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[10] The Supreme Court has, of course, frequently upheld delegation of regulatory authority under the commerce clause power. Delegations of authority conferred by many other constitutional provisions also have been sustained, however. It has been held, for example, that Congress properly delegated power over immigration, see INS v. Chadha, 462 U.S. 919, 953-54 n.16 (1983); United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 542-44 (1950); the power to determine what constitutes a federal crime, see United States v. Sharpnack, 355 U.S. 286 (1958); United States v. Grimaud, 220 U.S. 506 (1911); and the power to legislate for the District of Columbia, even though the Constitution describes that power as "exclusive" in Congress. See District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953). Moreover, in Lichter, 334 U.S. at 778-79, the Court stated that Congress' power to delegate "is especially significant in connection with constitutional war powers."

J. W. Hampton, 276 U.S. at 409; see also Field v. Clark, 143 U.S. at 680-94.

The second contention that may be viewed as going to per se nondelegability of the authority conferred by the Act (though it is related to the issue of inadequate standards) concerns the breadth of the power allocated to administrative officials, which plaintiffs assert is constitutionally excessive. There is no doubt that the Act delegates broad authority, but delegation of similarly broad authority has been upheld in past cases. In Yakus, for example, the Court upheld a statute which delegated to an unelected Price Administrator the power "to promulgate regulations fixing prices of commodities." 321 U.S. at 420. In Bowles v. Willingham, 321 U.S. 503, 512, 514-15 (1944), it upheld the delegation of power to institute rent controls on real property anywhere in the nation under specified circumstances. Finally, in Amalgamated Meat Cutters v. Connally, 337 F. Supp. 737, 745, 763 (D.D.C. 1971), a three-judge district court upheld a delegation of authority to the President "to issue such orders and regulations as he deems appropriate to stabilize prices, rents, wages and salaries." The authority conferred by the present Act, which permits administrators to affect spending levels for a specified range of federal programs, and only to a certain degree, seems to us no broader than these delegations that have been upheld. We think, in any event, that the ultimate judgment regarding the constitutionality of a delegation must be made not on the basis of the scope of the power alone, but on the basis of its scope plus the specificity of the standards governing its exercise. When the scope increases to immense proportions (as in Schechter) the standards must be correspondingly more precise. As we shall see, the standards governing the power here are much more specific than in the cases just described.

Nor is it the law, as plaintiffs assert, that a broad delegation such as this must be supported by some rigorous "principle of necessity" which is allegedly not met here because Congress has exercised sole power over appropriations in the past and presumably could continue to do so. To be sure, in delegation cases the Supreme Court

has occasionally recognized the "necessity" for a delegation. See, e.g., Buttfield v. Stranahan, 192 U.S. 470, 496 (1904). It is doubtful, however, that the word "necessity" in that context, any more than the word "necessary" in the "necessary and proper" clause of the Constitution, refers to an "absolute physical necessity." See McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 413-15 (1819). Rather, necessity refers to a strong utility and convenience, which can certainly be considered to exist here. In any case, while "necessity" has been noted by the Court in upholding a delegation, "lack of necessity" has never been invoked to strike one down. The same response may be made to plaintiffs' argument based upon what they consider the long (six-year) duration of the present broad delegation: while extremely limited duration has been invoked as one of the elements sustaining a delegation, lengthy duration has never been held to render one void. The delegations upheld in J.W. Hampton, 276 U.S. at 394, and Field v. Clark, 143 U.S. at 649, for example, were for indefinite terms.

Finally, plaintiffs argue that the present delegation is per se invalid because it allows administrators to "nullify" or "override" laws. Again we disagree. The Supreme Court previously has upheld delegations which permit officials to determine when, if ever, a law should take effect. See, e.g., Rock Royal Co-operative, 307 U.S. at 577-78; Currin v. Wallace, 306 U.S. 1, 15-16 (1939); Field v. Clark, 143 U.S. at 693; The Cargo of the Brig Aurora v. United States, 11 U.S. (7 Cranch) 382, 388 (1812). In such cases, the Court classifies Congress' action as legislating in contingency. The instant Act is no more than a form of such contingent legislation. Throughout the Act, Congress has stipulated that the full effectiveness of all appropriations legislation enacted for fiscal years 1986 to 1991 will be contingent upon the administrative determination whether all appropriated funds, when measured against revenues, result in a budget deficit in excess of required target figures. Viewed in this context, the authority delegated by the Act does not differ in kind from that approved in prior cases.

C

We come, then, to what is the plaintiffs' principal argument on the excessive delegation point: that because of the lack of standards and the inherent imprecision of the duties conferred upon the administrators, the Act fails adequately to confine the exercise of administrative discretion. The search for adequate standards to restrict administrative discretion lies at the heart of every delegation challenge. The essential inquiry is whether the specified guidance "sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will." Yakus, 321 U.S. at 425.

Our consideration of this objection requires a careful review of the statute. The Act begins by establishing a "maximum deficit amount" for each fiscal year between 1986 and 1991. Act § 201(a)(1). It then requires the Directors of the OMB and the CBO to estimate the anticipated "budget base levels of total revenues and budget outlays" for a given fiscal year, to determine whether the projected deficit for that year will exceed the maximum deficit amount for that year by more than a specified amount, and to estimate the rate of real economic growth that will occur during that fiscal year, as a whole and by quarters, and the rate of real economic growth that occurred during each of the last two quarters of the preceding fiscal year. Id. § 251(a)(1). The Directors are then jointly to report their conclusions to the Comptroller General. Id. § 251(a)(2).[11]

The Comptroller General is instructed to "review and consider the report" and, "with due regard for the data, assumptions, and methodologies used in reaching the conclusions set forth therein," issue his own report making the same type of estimates and determinations contained in the Directors' report. Act § 251(b)(1)-(2). The

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[11] These conclusions all contribute to the calculation of whether the estimated deficit for a given fiscal year exceeds the maximum deficit amount by more than the amount specified in § 251(a)(1)(B) of the Act. Only if it does so will the Directors recommend spending reductions. See Act § 251(a)(2). Plaintiffs do not challenge the procedure by which the administrators are to allocate the spending reductions necessary to reduce the deficit excess.

Comptroller General's report is to "be based on the estimates, determinations, and specifications of the Directors and shall utilize the budget base, criteria, and guidelines set forth" in specified sections of the Act. Id. § 251(b)(1). The report must "fully explain" any differences between its determinations and those included in the report of the Directors. Id. § 251(b)(2).[12]

In considering whether this scheme contains constitutionally adequate legislated standards, we first observe that it does set forth specific assumptions that are to be used in calculating the budget base. See Act § 251(a)(6). The administrative officials are directed to assume, with some specified exceptions, "the continuation of current law in the case of revenues and spending authority," id. § 251(a)(6)(A), (C)[13] and, in all areas to which the preceding assumption is inapplicable, "appropriations equal to the prior year's appropriations except to the extent that annual appropriations or continuing appropriations for the entire fiscal year have been enacted." Id. § 251(a)(6)(B). They must assume that "expiring provisions of law providing revenues and spending authority . . . do expire, except that excise taxes dedicated to a trust fund and agricultural price support programs administered through the Commodity Credit Corporation are extended at current rates." Id. § 251(a)(6)(C). Additionally, they must assume that "Federal pay adjustments for statutory pay systems" will be as recommended by the President and will not result in pay reductions and that Medicare spending levels for inpatient hospital

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12 In fiscal years 1987-1991, the Directors and the Comptroller General are required to submit revised reports under § 251(c) of the Act. We disregard that refinement for present purposes, since the types of determinations to be made in those revised reports do not differ from those required to be made in the initial reports.

13 "Spending authority" is defined by reference to the Congressional Budget Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (codified in relevant part as amended at 2 U.S.C. §§ 631-661 (1982)). The relevant provision states that "spending authority" means temporary or permanent authority related to government contractual obligations, the incurring of indebtedness, and the making of certain payments, such as for loans and grants, if such budget authority is "not provided for in advance by appropriations Acts." 2 U.S.C. § 651(c)(2). "Spending authority" does not include authority "to insure or guarantee the repayment of indebtedness incurred by another person or government." Id. § 651(c).

services will be based upon specified regulations. Id. § 251(a)(6)(D). Finally, certain spending deferrals proposed by the President are not to be included in the calculation. Id. All of these directions relate to the required calculation of "budget base levels of total revenues and total budget outlays" for a fiscal year.

The Act provides further guidance and limitation by way of definition. The "real economic growth" to be calculated is defined as "the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions." Act § 257(6). "Budget outlays" and "budget authority" are defined by reference to provisions of the Congressional Budget and Impoundment Control Act of 1974.[14] "Deficit" is defined as "the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year." Id. §§ 257(4), 201(a)(1). Moreover, the latter definition provides certain criteria for calculation of the deficit. See id. § 201(a)(1).[15]

These required assumptions and definitions are given additional meaning by reference to years of administrative and congressional experience in making similar economic projections and calculations under the Congressional Budget Act of 1974.[16] The present Act's references to the 1974 Act and to Department of Commerce

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[14] Pub. L. No. 93-344, 88 Stat. 297 (codified in relevant part as amended at 2 U.S.C. §§ 621-688 (1982)). "Budget outlays" means, "with respect to any fiscal year, expenditures and net lending of funds under budget authority during such year." 2 U.S.C. § 622(1). "Budget authority" means "authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds, except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government." Id. § 622(2).

[15] These criteria relate, inter alia, to treatment of Social Security funds and the "receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity." Act § 201(a)(1).

[16] Under the 1974 Act, the CBO is required to perform a number of economic calculations. For example, near the beginning of each fiscal year, it must issue a report projecting for five fiscal years the total new budget authority and total budget outlays for each fiscal year in that period, revenues to be received in each fiscal year, the anticipated surplus or deficit, and the amount of "tax expenditures." 2 U.S.C. § 639(c) (1982).

regulations manifest Congress' intent that past practice should inform the administrators' calculations. The standards set by this Act thus "derive much meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear." American Power & Light Co., 329 U.S. at 104; see also Lichter, 334 U.S. at 785 ("Standards prescribed by Congress are to be read in the light of the conditions to which they are to be applied."); Amalgamated Meat Cutters, 337 F. Supp. at 748 (standards set by statute are defined in part by consideration of experience under previous wage and price stabilization statutes). Additionally, we note that the economic calculation standards, which might seem vague and confusing to laymen, will have more precise meaning to officials accustomed to making such determinations. Here, as in Sunshine Anthracite Coal Co., 310 U.S. at 398, "in the hands of experts the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose of the Act."

We are of the clear view that the totality of the Act's standards, definitions, context, and reference to past administrative practice provides an adequate "intelligible principle" to guide and confine administrative decisionmaking. It is unquestionably true, as plaintiffs point out, that in making the assessments of current facts and the predictions of future facts that the statute requires, a good deal of judgment is involved, and different individuals faithfully seeking to follow Congress' instructions may reach different results. Nevertheless, the discretion involved in assessing current facts and predicting future ones is inseparable from administration of the law, and it is one of the reasons we consider it important to elect our Chief Executive. If the facts and predictions here are difficult to ascertain, they are no more so than many others committed to the charge of administrative officials, such as the complex economic calculations required of the agencies that determine the discount rate, the consumer price index, and the gross national product. What is significant about this case, and what distinguishes it from many other cases in which delegation has been upheld, is that the

only discretion conferred is in the ascertainment of facts and the prediction of facts.[17] The Comptroller General is not made responsible for a single policy judgment as to, for example, what is a "fair price," see Yakus, 321 U.S. at 414, or when it would be "appropriate" to freeze wages and prices, see Amalgamated Meat Cutters, 337 F. Supp. at 737, or wherein lies the "public interest," see National Broadcasting Co. v. United States, 319 U.S. 190 (1943). Compared with the cases upholding administrative resolution of such issues, the present delegation is remote from legislative abdication. Congress "is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officials." Yakus, 321 U.S. at 425-26.

D

Finally, we consider plaintiffs' argument that the delegation is unlawful because of the preclusion of judicial review. Section 274(h) of the Act provides that "[t]he economic data, assumptions, and methodologies used by the Comptroller General in computing the base levels of total revenues and total budget outlays . . . shall not be subject to review in any judicial or administrative proceeding." This is of course not a total preclusion of judicial review with respect to all action taken under the Act. It does not restrict the bringing of constitutional challenges; indeed, in subsection 274(a), the Act endeavors to facilitate this type of judicial review by broadly designating those who may bring such suits. In addition, subsection 274(g) preserves the rights guaranteed by other laws; thus, there is nothing to prevent a court from determining whether the operation of the Act improperly infringes upon such rights. Moreover, by its terms, subsection 274(h) would not prevent a court from determining whether the Comptroller

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[17] Of course the Comptroller General must interpret the law in applying the provisions of the Act, a point that will be relevant to the separation-of-powers discussion in Part IV of this opinion. Whether or not that power can appropriately be considered a "discretion," it is necessarily possessed by all officers charged with administration of the law and therefore cannot possibly cause problems of unconstitutional delegation.

General failed to make one of the assumptions required by subsection 251(a)(6). Additionally, since the judicial review preclusion extends only to determination of "base levels of total revenues and total budget outlays," a court presumably could determine whether the Comptroller General had complied with the deficit calculation criteria contained in subsection 201(a)(1). Nor are courts precluded from considering whether any allocation of spending reductions is made pursuant to statutory standards. Finally, the Act expressly provides for review of the presidential sequestration orders to determine their compliance with statutory requirements. See Act § 274(d).

The Act does insulate, however, those exercises of judgment by the Comptroller General that the plaintiffs challenge and that we have approved above. Plaintiffs argue that a condition of the validity of, if not all delegations, at least a delegation as broad as that here at issue, is the availability of judicial review of its exercise. We do not agree. To be sure, the Supreme Court has sometimes alluded to the availability of judicial review in its catalogue of factors such as "necessity" and "limited duration," discussed above, validating the delegation. In Opp Cotton Mills, for example, it said that

> where ... the standards set up for the guidance of the administrative agency, the procedure which it is directed to follow and the record of its action which is required by statute to be kept or which is in fact preserved, are such that Congress, the courts and the public can ascertain whether the agency has conformed to the standards which Congress has prescribed, there is no failure of performance of the legislative function.

312 U.S. at 144 (emphasis added). And more recently, in INS v. Chadha, it noted in dictum that the exercise of delegated authority "is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review as well as the power of Congress to modify or revoke the authority entirely." 462 U.S. at 953-54 n.16.

These allusions cannot be thought to establish the principle that judicial review is essential to sustain a delegation, since the exercise of many validly delegated authorities is statutorily insulated from judicial review. See, e.g., Southern Railway v. Seaboard Allied Milling Corp., 442 U.S. 449, 454-64 (1979) (construing provision of Interstate

Commerce Act); Thompson v. Clark, 741 F. 2d 401, 404-05 (D.C. Cir. 1984) (construing provision of Regulatory Flexibility Act). Even the more limited principle that judicial review can "save" a delegation that would otherwise be invalid is questionable, since if the requisite minimum standards have in fact not been established by Congress, permitting them to be invented by the courts rather than by the administrator is no less a delegation of political power, and arguably a worse one, since it is to a nonpolitical branch, and a branch even less subject to congressional controls. In any event, since we do not regard the present delegation as close to the line of invalidity, and since judicial review of almost all of the administrative determinations remains available, we find that insulating from judicial review the "economic data, assumptions, and methodologies used . . . in computing the base levels of total revenues and total budget outlays" provides no basis for finding the delegation invalid.

* * * * *

In sum, our review of the aggregate effect of the factors identified by the plaintiffs leads us to conclude that the delegation made by the Act passes constitutional muster. Apart from the technicalities of the matter, the realities produce the same conclusion. It seems to us not true, as plaintiffs have asserted, that Congress has declined to make the "hard political choices." To the contrary, it has decided to impose the severe constriction of federal spending necessary to produce a balanced budget by fiscal year 1991, it has established an intricate administrative mechanism to address that goal, and it has specified in meticulous detail which program budgets will be reduced in order to achieve that result, and by how much. See generally Act §§ 251(a)(3), 255, 256. All that has been left to administrative discretion is the estimation of the aggregate amount of reductions that will be necessary, in light of predicted revenues and expenditures, and we believe that the Act contains standards adequately confining administrative discretion in making that estimation. While this is assuredly an

estimation that requires some judgment, and on which various individuals may disagree, we hardly think it is a distinctively political judgment, much less a political judgment of such scope that it must be made by Congress itself. Through specification of maximum deficit amounts, establishment of a detailed administrative mechanism, and determination of the standards governing administrative decisionmaking, Congress has made the policy decisions which constitute the essence of the legislative function. It "has defined the circumstances when its announced policy is to be declared operative and the method by which it is to be effectuated. Those steps constitute the performance of the legislative function in the constitutional sense." Bowles v. Willingham, 321 U.S. at 514. Accordingly, plaintiffs' delegation challenge is rejected.

IV

We turn to the next major objection to the Act's automatic deficit reduction process, pressed in particular by the United States: that the role of the Comptroller General in that process is invalid because he does not possess the constitutional qualifications to perform it.[18] The objection takes various forms, but the only one we find it necessary to address is the contention that the Act confers upon the Comptroller General powers which are executive in nature, and which therefore cannot be conferred upon an officer who lacks the degree of independence from Congress that their exercise constitutionally requires. Specifically, the government objects to the fact that the Comptroller General, while appointed by the President with the advice and consent of

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[18] It is argued by some of the plaintiffs that the Act in reality confers power not upon the Comptroller General but rather upon the Directors of the OMB and the CBO, whose joint report the Comptroller General assertedly will "rubber-stamp." We find that assertion unconvincing, and thus direct our attention to the separation-of-powers concerns raised by the Comptroller General's formal powers under the Act. Of course, if it were true and relevant that the exercise of those powers would effectively be dictated by the Directors, our conclusion that the Act unconstitutionally vests executive powers in an official removable in a manner inconsistent with the exercise of such powers would be a fortiori correct, because the Director of the CBO is removable by resolution of either House. See 2 U.S.C. § 601(a)(4) (1982).

the Senate, is removable not only by impeachment (as are all officers of the United States) but also by joint resolution of Congress for specified causes, including inefficiency and neglect of duty.[19]

A

Three threshold objections are raised to our consideration of this issue as a basis for invalidating the automatic deficit reduction process. First, intervenors argue that, until removal is attempted, the issue of the effect of the Comptroller General's removability upon his powers is not ripe for adjudication. This argument is flatly contradicted by the decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). There the Supreme Court adjudicated (and in fact found meritorious) the claim that bankruptcy judges who were appointed to fixed fourteen-year terms, subject to removal for cause by the judicial council of the circuit in which they served, and whose salaries were not immune from possible diminution, could not constitutionally exercise certain of the powers granted them by the Bankruptcy Act of 1978 — notwithstanding the fact that no removal or salary diminution had been attempted. 458 U.S. at 60-61, 87 (plurality opinion).

Intervenors seek to distinguish Northern Pipeline on the asserted ground that the Court focused its attention on what they describe as the constitutionally defective

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[19] The provision of law governing the Comptroller General's removal reads as follows:

> A Comptroller General or Deputy Comptroller General retires on becoming 70 years of age. Either may be removed at any time by —
> (A) impeachment; or
> (B) joint resolution of Congress, after notice and an opportunity for a hearing, only for —
> (i) permanent disability;
> (ii) inefficiency;
> (iii) neglect of duty;
> (iv) malfeasance; or
> (v) a felony or conduct involving moral turpitude.

31 U.S.C. § 703(e)(1) (1982).

tenure provision that had already been exercised (viz., under their analysis, the provision appointing bankruptcy judges to a fixed term), rather than the ones that had not yet been exercised (viz., the provisions permitting removal during the fixed term and reduction of salary). As a factual matter, the assertion is not true. The Northern Pipeline Court focused no more of its attention on the fixed-term provision than on the removal-for-cause provision or the absence of statutory protection against diminution in salary; it simply noted all three problems, drawing no distinction among them on "ripeness" or any other grounds. Northern Pipeline, 458 U.S. at 60-61. Moreover, the very notion that the constitutional vice in Northern Pipeline had been "exercised," while in the present case the asserted constitutional vice has not been, strikes us as little more than semantic legerdemain. In the same sense in which the bankruptcy judges had already been appointed to positions with a fixed term, the Comptroller General has already been appointed to a position subject to congressional removal; and in the same sense that the congressional removal provision has not yet been applied in this case, neither had the provision requiring judges to step down after fourteen years in Northern Pipeline. It is true, of course, that the expiration of fourteen years was certain to occur while in the present case congressional removal is not. But that is quite irrelevant to whether the two provisions differ in their immediate impact, so that one is more "ripe" for review than the other. The immediate impact in Northern Pipeline came not from the certainty of expiration of fourteen years, but from the bankruptcy judge's awareness of the possibility of non-reappointment. It is his presumed desire to avoid that possibility by pleasing the appointing power, just as in the present case it is the Comptroller General's presumed desire to avoid removal by pleasing Congress, which creates the here-and-now subservience to another branch that raises separation-of-powers problems.[20]

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[20] Intervenors also seek to find support for their ripeness argument in Clark v. Valeo, 559 F.2d 642 (D.C. Cir.) (en banc) (per curiam), aff'd mem., 431 U.S. 950 (1977), and Muller Optical Co. v. EEOC, 743 F.2d 380 (6th Cir. 1984). It is not there. Clark, to be sure, rejected a challenge to a legislative veto provision as unripe because the provision (cont'd)

The second threshold argument, made by the Senate, is that, since the manner of removal that the Comptroller General's tenure statute embodies[21] is functionally the same as new legislation, there is no more reason for us to consider whether the existence of that tenure statute invalidates the present Act than there would be to consider, in the absence of such a statute, whether the possibility of Congress' passing a law removing the Comptroller General would invalidate the Act. We disagree. Insofar as justiciability and ripeness are concerned, the mere possibility that Congress might seek to remove an officer is no more comparable to its formal assertion (by legislation) of the power to do so, than is the mere possibility of an agency's punishing certain conduct comparable to its formal assertion (by rule) of the power to do so. Cf. Abbott Laboratories v. Gardner, 387 U.S. 136 (1967). It is the prior assertion of authority to remove embodied in the tenure statute that has the immediate effect, and presumably the immediate purpose, of causing the Comptroller General to look to the legislative branch rather than the President for guidance. And it is this, in turn, that constitutes the asserted evil of which the plaintiffs complain. The logic of the Comptroller General's argument leads to the conclusion that a tenure statute providing for removal of a judge exercising Article III powers by joint

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had not been exercised. But Clark involved a naked attack upon the provision itself and not, like the present case, a challenge to present use of the statutory powers to which the provision was attached. And Muller, which did address a challenge comparable to the present case, implicitly rejects rather than supports intervenors' ripeness argument, deciding on the merits a claim that the existence of an unexercised legislative veto provision in a statute rendered actions taken under that statute unconstitutional. Muller, 743 F.2d at 388. See also Alaska Airlines, Inc. v. Donovan, 766 F.2d 1550 (D.C. Cir. 1985) (holding on the merits that the existence of an unexercised legislative veto provision in a statute would render invalid actions taken under the statute unless the legislative veto provision were severable from the portion of the statute pursuant to which the challenged actions were taken), petition for cert. filed, 54 U.S.L.W. 3394 (U.S. Nov. 27, 1985) (No. 85-920).

21 The statute provides for removal by joint resolution, which requires either presidential approval or passage by a two-thirds vote of both Houses of Congress over a presidential veto. In assessing the compatibility of such a provision with the constitutional doctrine of separation of powers, we think it most appropriate to focus our attention on the latter possibility — that Congress could remove the Comptroller General despite presidential opposition — and we therefore refer to the provision as authorizing congressional removal.

resolution could similarly not be challenged, a prospect we are not prepared to entertain.

Intervenors' last threshold argument is that, even if the powers granted to the Comptroller General under the Act cannot be conferred upon an officer removable by Congress, that conclusion does not necessarily invalidate the Act, but rather requires us to choose which of the two incompatible provisions (the powers in the Act or the removal authority) should be set aside. That decision, they assert, should turn primarily upon our estimation of which of the two provisions Congress would have wished to survive — which they maintain is the Act.

Intervenors do not refer us to, nor are we aware of, any case in which a court confronted with separate statutes, constitutionally incompatible in combination, has even considered choosing which of the two to invalidate, much less resolved that choice as intervenors suggest. To the contrary, as the cases specifically involving incompatible authorization and tenure (or appointment) statutes amply demonstrate, the courts set aside that statute which either allegedly prohibits or allegedly authorizes the injury-in-fact that confers standing upon the plaintiff. See Springer v. Government of the Philippine Islands, 277 U.S. 189 (1928) (removing from office, in quo warranto proceeding brought by Philippine Governor-General, officials exercising executive power but appointed by officers of Philippine legislature); Myers v. United States, 272 U.S. 52 (1926) (setting aside tenure-of-office statute that was the basis of postmaster's claim of unlawful presidential removal). Indeed, the Supreme Court has taken that approach even when the incompatible authorization and removal (or appointment) provisions are contained within the same enactment. See Northern Pipeline, 458 U.S. at 50 (setting aside exercise of adjudicatory authority over plaintiff by bankruptcy judge who lacked Article III life tenure); Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam) (setting aside Federal Election Campaign Act provisions granting authority over plaintiffs to officials appointed in a manner incompatible with the exercise of such authority).

Even if we were to agree, however, that when confronted with two separate

provisions that cannot both be constitutionally sustained, we are free to choose between them, and are to make our choice on the basis of presumed congressional intent, we would conclude that in the present case it is the grant of powers under the Act that would have to fall. As the brief of Intervenor Speaker and Bipartisan Leadership Group of the House meticulously details, the grant of authority to the Comptroller General was a carefully considered protection against what the House conceived to be the pro-executive bias of the OMB. It is doubtful that the automatic deficit reduction process would have passed without such protection, and doubtful that the protection would have been considered present if the Comptroller General were not removable by Congress itself — much less if he were removable (as validation of his functions under this legislation might constitutionally require, a point we do not reach) at the discretion of the President, like the Director of the OMB himself.

A congressional intent that it is the Comptroller General's powers under this Act, rather than his manner of removal, that should yield if both cannot coexist is also strongly suggested by the fallback deficit reduction process specifically established by the Act to take effect if the automatic deficit reduction process is declared constitutionally infirm — especially since it is clear that one of the grounds of possible infirmity specifically brought to Congress' attention by the executive branch was the participation of the Comptroller General.[22] By reason of that fallback process, we might add, setting aside the grant of powers to the Comptroller General would result in a state of affairs that Congress unquestionably was willing to accept, whereas congressional acceptance of an automatic deficit reduction process administered by a Comptroller General unremovable by Congress (and perhaps removable at will by the

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[22] See Statement on Signing H.J. Res. 372 Into Law, 21 Weekly Comp. Pres. Doc. 1490-91 (Dec. 12, 1985) ("[E]xecutive functions may only be performed by officers in the executive branch. The . . . Comptroller General [is an] agent[ ] of Congress, not [an] officer[ ] in the executive branch. . . . My administration alerted Congress to [this] . . . problem[ ] throughout the legislative process in an effort to achieve a bill free of constitutionally suspect provisions. . . . [W]e were unsuccessful in this goal . . . .").

President) is purely speculative. Indeed, even apart from the fallback process a decision setting aside the grant of powers under this Act rather than the separate statutory provision for the Comptroller General's removal would run much less risk of frustrating congressional intent. We have no idea how many powers of the Comptroller General, conferred upon him by other statutes, would not have been conferred if he were not subject to congressional removal.

We conclude, therefore, that the question whether the powers conferred upon the Comptroller General by the Act are constitutionally incompatible with his removability from office by Congress is ripe for our consideration; and that an affirmative answer requires invalidation of those powers. We turn to the merits of this issue.

B

The only portions of the Constitution explicitly addressing the power to remove officers of the United States[23] are the impeachment clauses, which provide that "The President, Vice President and all civil Officers of the United States, shall be removed

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[23] "Officers" are to be distinguished from "employees," see Buckley v. Valeo, 424 U.S. at 126 & n.162, as to whom the congressional power to restrict or impose removal may be quite different. The distinction is not relevant to the present case, however, since it is conceded that the Comptroller General is an officer. There may also be a difference, at least insofar as Congress' ability to restrict the President's removal power is concerned, between those officers included within the meaning of the phrase "inferior Officers" in the appointments clause of the Constitution, whose manner of appointment that clause permits to be controlled to some degree by Congress (viz., to be vested "in the President alone, in the Courts of Law, or in the Heads of Departments," Art. II, § 2, cl. 2); and other officers, whom the appointments clause requires to be appointed by the President with the advice and consent of the Senate, id. See, e.g., Myers, 272 U.S. at 158-64; United States v. Perkins, 116 U.S. 483, 484-85 (1886) (dictum). That distinction also is not pertinent here, since no one contends, and it seems to us not seriously maintainable, that the Comptroller General is an "inferior Officer." Finally, there may be a distinction between "officers of the United States" and "officers of Congress," see Buckley v. Valeo, 424 U.S. at 127-28. Although it is not conceded that the Comptroller General comes within the former category (the government vigorously asserts the contrary), we find it unnecessary to decide the question, since if the Comptroller General is not an officer of the United States he is a fortiori unable to exercise the executive powers we find him unable to exercise on narrower grounds. Our analysis assumes, in other words, the more validating characterization of the office.

from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors," Art. II, § 4, and that the House of Representatives shall bring, and the Senate try, the impeachment, Art. I, § 2, cl. 5; Art. I, § 3, cl. 6. The appointments clause of the Constitution, which it is universally agreed has some bearing upon removal powers, reads as follows:

> . . . [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Art. II, § 2, cl. 2.

Since the early days of the Republic it has not been doubted that the Constitution implicitly confers upon the President power to remove civil officers whom he appoints, at least those who exercise executive powers. In what has come to be known in the legal literature as the "Decision of 1789," the First Congress, after heated debate, deleted from a proposed bill creating the Department of Foreign Affairs language which provided that the Secretary of Foreign Affairs was "to be removable from office by the President." The reason urged by the proponents of the deletion was that the original text implied the absence of a constitutionally conferred power of the President to effect the removal. See Myers, 272 U.S. at 111-36.

The extent to which the implicit presidential removal power extends beyond officers exercising executive powers, however, the extent to which it can be restricted by legislation, and the extent to which it can be conferred by legislation upon the Congress itself, have been the subject of Supreme Court pronouncements that are conflicting in their reasoning, if not in their results. See generally Burkoff, Appointment and Removal under the Federal Constitution: The Impact of Buckley v. Valeo, 22 Wayne L. Rev. 1335 (1976); Donovan & Irvine, The President's Power to Remove Members of Administrative Agencies, 21 Cornell L.Q. 215 (1936). The cases are few enough that

their holdings and their principal rationales may be readily summarized.

In In re Hennen, 38 U.S. (13 Pet.) 230 (1839), the Court held that a district court clerk, who had been appointed by a district court judge pursuant to that provision of the Constitution authorizing Congress to vest the appointment of "inferior Officers . . . in the Courts of Law," could also be removed by a district court judge. The Court said that "[i]n the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule, to consider the power of removal as incident to the power of appointment." Id. at 259.

In United States v. Perkins, 116 U.S. 483 (1886), the Court upheld an award of back pay to a cadet-engineer in the Navy, who had been appointed by the Secretary of the Navy and was dismissed by him in disregard of a statutory provision prohibiting dismissal of any naval officer in peacetime except by court martial. The Court quoted and approved the opinion of the Court of Claims stating that, regardless of what the situation might be with regard to officers appointed by the President by and with the advice and consent of the Senate under the self-operative provision of the Constitution,

> 'when Congress, by law, vests the appointment of inferior officers in the heads of Departments it may limit and restrict the power of removal as it deems best for the public interest. The constitutional authority in Congress to thus vest the appointment implies authority to limit, restrict, and regulate the removal by such laws as Congress may enact in relation to the officers so appointed.'

Id. at 485.

In Shurtleff v. United States, 189 U.S. 311 (1903), the Court held that a statute which provided that a particular Customs Department official "may be removed from office at any time by the President for inefficiency, neglect of duty, or malfeasance in office" did not prevent presidential removal for other reasons, since such a limitation would have to be stated in "very clear and explicit language," id. at 315. The Court did not confront, therefore, the issue of whether such a limitation would be constitutional.

In Myers v. United States, 272 U.S. 52 (1926), the Court finally dealt with the constitutionality of a statutory provision giving Congress a role in the removal process.

The plaintiff was a postmaster, appointed by the President with the advice and consent of the Senate, for a four-year term; he was dismissed by the President despite a tenure-of-office act requiring advice and consent of the Senate for his removal. The Court found the limitation unconstitutional in a 71-page opinion by Chief Justice Taft exhaustively examining the historical record bearing upon the meaning of the applicable constitutional texts. The nub of the analysis is that, as the Decision of 1789 in the Court's view established, and as In re Hennen had held, "the power of removal [is] incident to the power of appointment," 38 U.S. (13 Pet.) at 259. The Constitution gives Congress no authority to limit that removal power, except, implicitly, in the provision authorizing Congress to provide for the appointment of inferior officers by means other than the constitutionally prescribed method of presidential appointment with Senate consent. At least where it exercises that authority in such fashion as to vest appointment in the head of a department, it "may prescribe incidental regulations controlling and restricting the [appointing officer] in the exercise of the power of removal." 272 U.S. at 161. Even in the latter situation, the Court added, for Congress to "draw to itself, or to either branch of it, the power to remove or the right to participate in the exercise of that power . . . . would be . . . to infringe the constitutional principle of the separation of governmental powers." Id. The opinion clearly regarded its holding as applicable to officers whose functions include "duties of a quasi-judicial character," id. at 135, including specifically the commissioners of the Interstate Commerce Commission, see id. at 171-72.

The next case, decided nine years later, warrants more extended attention, since it is the last major discussion by the Supreme Court of the constitutional authority of Congress over power of removal. Humphrey's Executor v. United States, 295 U.S. 602 (1935), was a suit for back pay by a commissioner of the Federal Trade Commission whom President Roosevelt had removed without cause. The Federal Trade Commission Act provided that commissioners "may be removed by the President for inefficiency,

neglect of duty, or malfeasance in office." The Court's opinion, by Justice Sutherland, first found that this language, unlike the virtually identical language involved in Shartleff, did bar removal for other causes, distinguishing the earlier case on the basis that the office there involved had no term of appointment, whereas Federal Trade Commissioners were limited to a term of seven years. Humphrey's Executor, 295 U.S. at 619-26. Then, in six pages addressing the constitutional issue — two of which were spent discussing why the facts of Myers were distinguishable — the opinion swept away much of the reasoning of Myers (precisely how much is one of the issues before us) and simultaneously revolutionized separation-of-powers analysis. The Court said that the holding of Myers extended only to "purely executive officers," and that the constitutional prohibition it expressed did not apply to an officer like the Federal Trade Commissioner, who "occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President," but acts only "in the discharge and effectuation of . . . quasi-legislative[24] or quasi-judicial powers, or as an [officer of an] agency of the legislative or judicial departments of the government." 295 U.S. at 628.[25] As to the latter, it said, "illimitable power of removal is not possessed by

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24 It is noteworthy, though generally not noted, that the "quasi-legislative" powers referred to in Humphrey's Executor were not substantive rulemaking powers, which the Federal Trade Commission itself did not assert it possessed until 1962, see National Petroleum Refiners Ass'n v. FTC, 482 F.2d 672, 693 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974), but rather the responsibility to conduct investigations for the purpose of recommending legislation to Congress. See 295 U.S. at 621, 628. Though the holding of Humphrey's Executor is necessarily limited to this sort of function, it is generally assumed (though without any Supreme Court holding to sustain the point) that rulemaking is a "quasi-legislative activity" for purposes of the rule of Humphrey's Executor. See, e.g., INS v. Chadha, 462 U.S. 919, 953 n.16 (1983).

25 The Court did note that the President was authorized to direct the Federal Trade Commission to investigate and report alleged antitrust violations, but described that activity to be an "executive function — as distinguished from executive power in the constitutional sense — [exercised] in the discharge and effectuation of [the Federal Trade Commission's] quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the government." Humphrey's Executor, 295 U.S. at 628 & n.*. In this opinion, we are careful to direct our attention to the question whether the power that the Comptroller General exercises under the Act is "executive power in the constitutional sense."

the President," and Congress may "fix the period during which [the officer] shall continue in office, and . . . forbid . . . removal except for cause in the meantime." Id. at 629. This was said to be required by the doctrine of separation of powers, since "sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there," and since the "coercive influence [of unlimited presidential power of removal] threatens the independence of a commission, which is not only wholly disconnected from the executive department, but which . . . was created by Congress as a means of carrying into operation legislative and judicial powers, and as an agency of the legislative and judicial departments." Id. at 630.

The last Supreme Court decision involving the removal power was handed down almost three decades ago. Wiener v. United States, 357 U.S. 349 (1958), was another back-pay suit, by a commissioner of the War Claims Commission who had been removed by President Eisenhower without cause. It was uncontested that the Commission exercised only "quasi-judicial" functions, and the point at issue was whether Congress had prohibited presidential removal without cause. Despite the absence of any explicit pronibition, the Court found that

> [i]f, as one must take for granted, the War Claims Act precluded the President from influencing the Commission in passing on a particular claim, a fortiori must it be inferred that Congress did not wish to have hang over the Commission the Damocles' sword of removal by the President for no reason other than that he preferred to have on that Commission men of his own choosing.

357 U.S. at 356.[26] Accordingly, Humphrey's Executor was held to render the removal unlawful.

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[26] In other language, the Wiener Court suggested its view that, at least with respect to officers exercising "quasi-judicial" powers, the Constitution simply did not vest the President with a power of removal, even one that might be expressly or implicitly limited in appropriate circumstances by Congress. 357 U.S. at 352-53, 356. This language seems squarely at odds with a long line of authority, beginning with In re Hennen, 38 U.S. (13 Pet.) 230 (1839), and unchallenged even by Humphrey's Executor, which was careful to limit its decision to the question whether the Constitution vested in the President an "illimitable" power of removal. Humphrey's Executor, 295 U.S. at 629. We are unwilling to suppose that that line of authority has been overruled by the language in Wiener.

These cases reflect considerable shifts over the course of time, not only in the Supreme Court's resolutions of particular issues relating to the removal power, but more importantly in the constitutional premises underlying those resolutions. It is not clear, moreover, that these shifts are at an end. Justice Sutherland's decision in Humphrey's Executor, handed down the same day as A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935), is stamped with some of the political science preconceptions characteristic of its era and not of the present day — if not stamped as well, as President Roosevelt thought, with hostility towards the architect of the New Deal.[27] It is not as obvious today as it seemed in the 1930s that there can be such things as genuinely "independent" regulatory agencies, bodies of impartial experts whose independence from the President does not entail correspondingly greater dependence upon the committees of Congress to which they are then immediately accountable; or, indeed, that the decisions of such agencies so clearly involve scientific judgment rather than political choice that it is even theoretically desirable to insulate them from the democratic process. Moreover, "quasi-legislative" and "quasi-judicial" functions can no longer be regarded as extraordinary or even unusual activities of executive agencies. Finally, the expansion of due process protections, see, e.g., Goldberg v. Kelly, 397 U.S. 254 (1970), statutorily prescribed procedures for both rulemaking and adjudication, see 5 U.S.C. §§ 553-559 (1982), and an elaborate system of judicial review, see 5 U.S.C. §§ 701-706 (1982), have provided in more targeted fashion some of the protection against political intervention, when it is inappropriate, which Humphrey's Executor sought to provide wholesale. It has

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[27] Justice Jackson, who had been Roosevelt's attorney general, remarked:

> I really think the decision that made Roosevelt madder at the Court than any other decision was that damn little case of Humphrey's Executor v. United States. The President thought they went out of their way to spite him personally and they were giving him a different kind of deal than they were giving Taft.

E. Gerhart, America's Advocate: Robert H. Jackson 99 (1958).

in any event always been difficult to reconcile Humphrey's Executor's "headless fourth branch" with a constitutional text and tradition establishing three branches of government — assuming, as the rationale though not the narrow holding of Humphrey's Executor requires, that the presidential removal for cause permitted under the statute upheld there did not include removal because of the appointee's failure to accept presidential instructions regarding matters of policy or statutory application delegated to him by Congress.

Some knowledgeable observers, see, e.g., Strauss, The Place of Agencies in Government: Separation of Powers and the Fourth Branch, 84 Colum. L. Rev. 573, 633-40 (1984), think that abandonment of the Humphrey's Executor analysis has been presaged by the Supreme Court's 1983 decision in INS v. Chadha, 462 U.S. at 919, which declared invalid the legislative veto of agency action characterized in the majority and one of the dissenting opinions as "quasi-legislative," see id. at 953 n.16 (majority); id. at 989 (White, J., dissenting), and in the concurrence as "judicial in nature," see id. at 966 n.10 (Powell, J., concurring). See also Process Gas Consumers Group v. Consumer Energy Council of America, 463 U.S. 1216 (1983), aff'g mem. Consumers Union of United States, Inc. v. FTC, 691 F.2d 575 (D.C. Cir. 1982) (en banc) (per curiam) (applying the holding of Chadha to legislative veto of rulemaking by an "independent" regulatory agency). Assuredly some of the language of the majority opinion in Chadha does not lie comfortably beside the central revelation of Humphrey's Executor that an officer such as a Federal Trade Commissioner "occupies no place in the executive department," and that an agency which exercises only "quasi-legislative or quasi-judicial powers" is "an agency of the legislative or judicial departments of the government," 295 U.S. at 628.[28]

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[28] See, e.g., the following:

> To be sure, some administrative agency action — rulemaking, for example — may resemble "lawmaking." . . . This Court has referred to agency activity as being "quasi-legislative" in character. Humphrey's Executor v. United States, 295 U.S. 602, 628 (1935). Clearly, however, "[i]n the

(cont'd)

The Supreme Court's signals are not sufficiently clear, however, to justify our disregarding the rationale of Humphrey's Executor, and we view our present task as one of placing the facts before us into the framework established by Humphrey's Executor and by the holdings of earlier cases (including Myers) which Humphrey's Executor did not purport to overrule. In approaching that task, it becomes apparent at the outset that the present case falls neatly between the two stools of Myers and Humphrey's Executor. The Comptroller General is neither a "purely executive officer[ ]" whom Myers (as reinterpreted by Humphrey's Executor, see 295 U.S. at 627-28) requires to be subject to discretionary presidential removal; nor an officer such as that said to be involved in Humphrey's Executor, who "occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President," id. at 628. Rather, his status, insofar as the removal powers of the President are concerned, falls precisely within the no-man's land described in the last substantive paragraph of the Humphrey's Executor opinion:

> To the extent that, between the decision in the Myers case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise.

Id. at 632.

> framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952). See Buckley v. Valeo, 424 U.S., at 123. When the Attorney General performs his duties pursuant to § 244, he does not exercise "legislative" power. . . . It is clear . . . that the Attorney General acts in his presumptively Art. II capacity when he administers the Immigration and Nationality Act. Executive action under legislatively delegated authority that might resemble "legislative" action in some respects is not subject to the approval of both Houses of Congress and the President for the reason that the Constitution does not so require. . . . Congress' authority to delegate portions of its power to administrative agencies provides no support for the argument that Congress can constitutionally control administration of the laws by way of a congressional veto.

462 U.S. at 953-54 n.16.

It is unquestionable that some of the Comptroller General's powers — indeed, we will posit for purposes of the present decision, all except those at issue here — consist of (in the words of Humphrey's Executor) "specified duties as a legislative . . . aid," in the performance of which he "cannot in any proper sense be characterized as an arm or an eye of the executive." Id. at 628.[29] The Comptroller General's powers under the automatic deficit reduction process, however, do not come within that category. Under subsection 251(b)(1), the Comptroller General must specify levels of anticipated revenue and expenditure that determine the gross amount which must be sequestered; and he must specify which particular budget items are required to be reduced by the various provisions of the Act (which are not in all respects clear), and in what particular amounts. The first of these specifications requires the exercise of substantial judgment

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29 See, e.g., 2 U.S.C. § 686 (1982) (Comptroller General shall report unlawful impoundment of funds to both Houses of Congress); 2 U.S.C. § 687 (1982) (Comptroller General may sue the United States to force obligation of unlawfully impounded funds); 31 U.S.C. § 712(2) (1982) (Comptroller General shall estimate cost of compliance with expenditure restrictions in appropriations bills, report to Congress and make recommendations); 31 U.S.C. § 712(3) (1982) (Comptroller General shall analyze the efficiency of executive-agency expenditures of interest to Congress); 31 U.S.C. § 712(4) (1982) (Comptroller General shall make investigations at the request of either House or an appropriate committee thereof); 31 U.S.C. § 712(5) (1982) (Comptroller General shall give assistance and information to appropriate congressional committees); 31 U.S.C. § 716 (1982) (Comptroller General may sue heads of agencies to obtain audit information); 31 U.S.C. § 717(b) (1982) (Comptroller General shall evaluate the results of government activities at the request of either House of Congress or appropriate committees thereof); 31 U.S.C. § 717(c)-(d) (1982) (Comptroller General shall assist Congress and congressional committees in developing methods for the assessment of the results of governmental activities); 31 U.S.C. § 719 (1982) (Comptroller General shall make various reports to Congress and congressional committees).

The special relationship between the Comptroller General and Congress that is expressed in these statutes makes natural the frequent description of the Comptroller General and the General Accounting Office as "part of" or "an agency of" the legislative branch. See, e.g., Bowsher v. Merck & Co., 460 U.S. 824, 844 (1983); McDonnell Douglas Corp. v. United States, 754 F.2d 365, 368 (Fed. Cir. 1985); United States v. McDonnell Douglas Corp. v. United States, 751 F.2d 220, 224 (8th Cir. 1984); Delta Data Sys. Corp. v. Webster, 744 F.2d 197, 201 n.1 (D.C. Cir. 1984); but cf., e.g., Lear Siegler, Inc. v. Lehman, No. CV 85-1125-KN (C.D. Cal. Nov. 21, 1985); Ameron, Inc. v. United States Army Corps of Eng'rs, 607 F. Supp. 962 (D.N.J. 1985), appeal filed, No. 85-5226 (3d Cir.); United States ex rel. Brookfield Constr. Co. v. Stewart, 234 F. Supp. 94, 99-100 (D.D.C.), aff'd, 339 F.2d 753 (D.C. Cir. 1964) (per curiam). We need not and do not decide, however, whether such characterizations are accurate.

concerning present and future facts that affect the application of the law — the sort of power normally conferred upon the executive officer charged with implementing a statute. The second specification requires an interpretion of the law enacted by Congress, similarly a power normally committed initially to the Executive under the Constitution's prescription that he "take Care that the Laws be faithfully executed." Art. II, § 3. And both of these specifications by the Comptroller General are, by the present law, made binding upon the President in the latter's application of the law. Act § 252(a)(3). Indeed, the Comptroller General is explicitly directed to report to Congress on the extent to which the President follows his instructions. Act § 253. In our view, these cannot be regarded as anything but executive powers in the constitutional sense.

We are, therefore, in the no-man's land described by Humphrey's Executor, confronting an officer whose powers are neither exclusively executive nor exclusively nonexecutive. The Comptroller General argues, in essence, that this territory should be awarded to the "exclusively nonexecutive" side — that so long as the officer in question exercises some, or at least a substantial number of, nonexecutive powers, the constitutional restrictions upon the manner of his removal are the same as those applicable in Humphrey's Executor. We cannot accept that view.

What has been at issue in the congressional-executive dispute over the power of removal that began in the First Congress is not control over the officer but, ultimately, control over the governmental functions that he performs. And the object of all the Supreme Court's opinions on the subject has been to assure, in the words of Justice Story quoted in Humphrey's Executor, "that neither of the departments in reference to each other '[shall] possess, directly or indirectly, an overruling influence in the administration of their respective powers.'" 295 U.S. at 630 (quoting J. Story, Commentaries on the Constitution of the United States § 530 (4th ed. 1873)). The pursuit of that principle becomes a foolish game if all that is necessary for Congress to acquire an "overruling influence" over the administration of a constitutional executive power, no matter how

significant it may be, is to confer that power upon an official who exercises one or more nonexecutive powers as well. Nor are we disposed to resolve this matter on the basis of whether there is an "adequate" admixture of nonexecutive powers, or whether nonexecutive powers "predominate"; those are neither judicially manageable nor congressionally knowable standards. Thus, under the Comptroller General's theory the heads of most major executive agencies, since they exercise some quasi-legislative or quasi-judicial powers, would currently qualify for Humphrey's Executor treatment — and it is impossible to imagine any executive officer who could not be made to qualify by sagacious congressional conferral of nonexecutive powers in the future. On the Comptroller General's theory, not only he but also the Director of the OMB could be subjected to congressional removal.

Having concluded that we are in the middle ground, and that the middle ground cannot uniformly be accorded Humphrey's Executor treatment, we must decide precisely what treatment the present facts demand. At this point another distinction between Humphrey's Executor and the present case becomes relevant: the former upheld a statute that imposed no more than a partial restriction upon the presidential power of removal — removal without cause was prohibited, but presidential removal for "inefficiency, neglect of duty, or malfeasance in office" was allowed. The statute governing removal of the Comptroller General, by contrast, eliminates all presidential power of removal, and — much beyond that — confers the power of removal upon Congress. The enormous difference between the two, insofar as impact upon the balance of powers is concerned, is apparent. As was observed by the Court in Myers, which, unlike Humphrey's Executor, did involve the assertion of removal power by the Congress:

> The Court . . . has recognized in the Perkins case that Congress, in committing the appointment of such inferior officers to the heads of departments, may prescribe incidental regulations controlling and restricting the latter in the exercise of the power of removal. But the Court never has held, nor reasonably could hold . . . , that the excepting clause enables Congress to draw to itself, or to either branch of it, the power to remove or the right to participate in the exercise of that power.

272 U.S. at 161. It remains true that the Supreme Court has never sanctioned congressional assertion of such a power. We think it at least questionable whether the power would be approved even with respect to officers of the United States who exercise only "quasi-legislative" powers in the Humphrey's Executor sense — since it would dramatically reduce the value of the right to appoint such officers which the Constitution has assured to the Executive or to the Courts of Law, a right that the Supreme Court has regarded as an important element of the balance of powers, prompted by the founders' often expressed fear "that the Legislative Branch of the National Government will aggrandize itself at the expense of the other two branches." Buckley v. Valeo, 424 U.S. at 129. We are confident, however, that congressional removal power cannot be approved with regard to an officer who actually participates in the execution of the laws. Once an officer is appointed, it is only the authority that can remove him, and not the authority that appointed him, that he must fear and, in the performance of his functions, obey. Giving such power over executive functions to Congress violates the fundamental principle expressed by Montesquieu upon which the theory of separated powers rests: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Montesquieu, The Spirit of Laws, vol. I, bk. XI, ch. 6, at 152 (London 1823). See also The Federalist No. 48, at 327 (J. Madison) (P. Ford ed. 1898) ("[N]one of [the branches] ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers.").

The Comptroller General argues, however, that a congressional removal power limited to cause (which is what we have here) no more enables Congress to control executive powers than did the presidential removal power for cause, which was retained by the statute at issue in Humphrey's Executor, enable the President to control the exclusively "quasi-legislative" and "quasi-judicial" powers of the Federal Trade

Commission. It is not clear, to begin with, that a "quasi-legislative" power is the same as a legislative power in the constitutional sense, so that the intrusion upon the Executive here is parallel to the intrusion upon the Congress there.[30] Assuming, however, that it is, there are several answers to the Comptroller General's objection. Humphrey's Executor neither faced nor considered the question whether the limitations imposed by the doctrine of separation of powers on the scope of executive authority over the removal of nonexecutive officers are precisely equal to the analogous limitations on the scope of congressional authority over the removal of executive officers. Parity is no more to be expected there than it is with respect to the scope of the power to appoint, as to which the Constitution grants only a subordinate role to the Congress. It is the starting point of all judicial analysis in this area, see, e.g., In re Hennen, 38 U.S. (13 Pet.) 230 (1839), that the President's power to remove, however much it may be restricted, derives from the constitutional grant of his power to appoint; and we think the permissible impact of that power to remove upon an officer's independence, in comparison to the permissible impact of any such congressional power, may properly reflect the greater strength of that pedigree.[31] Moreover, insofar as effect upon

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30 Justice Jackson aptly characterized the ambiguity of the "quasi-legislative" and "quasi-judicial" categories enshrined in constitutional jurisprudence by Humphrey's Executor as follows:

> Administrative agencies have been called quasi-legislative, quasi-executive or quasi-judicial, as the occasion required, in order to validate their functions within the separation-of-powers scheme of the Constitution. The mere retreat to the qualifying "quasi" is implicit with confession that all recognized classifications have broken down, and "quasi" is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed.

FTC v. Ruberoid Co., 343 U.S. 470, 487-88 (1952) (Jackson, J., dissenting).

31 Of course, the Constitution vests Congress with the power to bring and try impeachments of all officers of the United States. We think it apparent, however, that this very limited power of removal, which may be exercised only through the trial and conviction of an officer for "Treason, Bribery, or other high Crimes and Misdemeanors," Art. II, § 4; simply cannot be compared to the congressional removal power at issue in this case in its effect upon the independence of executive officers. Moreover, the (cont'd)

balance of powers is concerned, congressional power to remove is much more potent, since the Executive has no means of retaliation that may dissuade Congress from exercising it — other than leaving the office vacant, thereby impairing the Executive's own functions. Congress, on the other hand, has many ways to make the President think long and hard before he makes a "for cause" removal that Congress disapproves, ranging from budget constriction to refusal to confirm a successor.

It seems to us entirely clear under the recent landmark decision in INS v. Chadha, 462 U.S. 919 (1983), that if the present statute had not inserted the Comptroller General between the President and the report of the Directors of the CBO and the OMB, and if the determinations to be made under the Act by the Comptroller General had been assigned instead to the President himself, Congress could not constitutionally provide for legislative veto of those determinations. It is also unthinkable that Congress could constitutionally provide for veto of those determinations by an officer removable by Congress — the Comptroller General, for example. It seems to us no more constitutionally permissible to achieve the same result ex ante instead of ex post, prescribing in advance the exercise of executive power, instead of invalidating its exercise.

We hold, therefore, that since the powers conferred upon the Comptroller General as part of the automatic deficit reduction process are executive powers, which cannot constitutionally be exercised by an officer removable by Congress, those powers cannot be exercised and therefore the automatic deficit reduction process to which they are central cannot be implemented. As earlier noted, we need not deliberate concerning the effect of this invalidation upon other portions of the Act, since the Act itself provides the answer: replacement of the automatic deficit reduction process with the fallback deficit reduction process, and preservation of the remainder of the Act intact. The Act

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existence of such a carefully limited congressional removal power undermines rather than supports the proposition that Congress may attempt to assert an additional power of removal.

also requires, § 274(e), that we stay the order implementing our judgment pending the outcome of any appeal.

* * * * *

We do not minimize the effect of our invalidation of one small section of the Act upon the entire statutory scheme. Our holding today eliminates the automatic deficit reduction process, and gives effect to the prescriptions of the Directors of the OMB and CBO only to the extent that they are adopted by joint resolution, i.e., legislation, under the fallback deficit reduction process. It may seem odd that this curtailment of such an important and hard-fought legislative program should hinge upon the relative technicality of authority over the Comptroller General's removal — particularly when we have rejected the more intuitive "excessive delegation" arguments that were the focus of the attacks upon the legislation by its opponents on the floor of Congress and by the plaintiffs here. But the balance of separated powers established by the Constitution consists precisely of a series of technical provisions that are more important to liberty than superficially appears, and whose observance cannot be approved or rejected by the courts as the times seem to require. Both of these points have been eloquently expressed by a respected scholar in course of discussing application of the Constitution's guarantee against removal of judges to officials appointed under Article I but in fact exercising Article III judicial powers:

> Mid-twentieth century Americans have become accustomed to assuming that the central constitutional method of protecting individual freedoms from being overridden by government ukase is to prevent governmental intrusions into certain defined zones of individual conduct. Thus, we quite rightly applaud actions enshrining constitutional rights to freedom of speech, religion, privacy, and equal protection.
>
> Those who wrote the Constitution, however, did not employ this technique. Rather, they emphasized the virtues of limiting governmental power and then dividing the remaining power among autonomous government compartments. Hence, most of our constitutional rights of individual liberty or autonomy are stated in constitutional amendments.

> The body of the Constitution as originally written is principally an exercise in applying the concepts of federalism and separation of powers to the new American nation. The framers were not disciples of John Stuart Mill, who had not yet been born, but of Montesquieu, whom they had read carefully.
>
> ....
>
> ... [P]art of the value of a clearly expressed, constitutional separation-of-powers principle often inheres in its apparent rigidity or inability to adapt easily to different solutions. As a nation, one question we must face every day is how far judges and legislators should be separated. Many rational answers to that question are possible. The United States has chosen, by the device of a written constitution, and on the basis of specific historical experience, to resolve that question at one time and in one way for almost all cases. To respect that judgment promotes stability, predictability and consistency, and avoids constant re-examination of troublesome policy issues underlying the question.

Krattenmaker, Article III and Judicial Independence: Why the New Bankruptcy Courts are Unconstitutional, 70 Geo. L.J. 297, 301-02, 311 (1981).

We observe, moreover, that although we have rejected the argument based upon the doctrine of unconstitutional delegation, the more technical separation-of-powers requirements we have relied upon may serve to further the policy of that doctrine more effectively than the doctrine itself. Unconstitutional delegation has been invoked by the federal courts to invalidate legislation only twice in almost 200 years, and the possibility of such invalidation, at least in modern times, is not a credible deterrent against the human propensity to leave difficult questions to somebody else. The instances are probably innumerable, however, in which Congress has chosen to decide a difficult issue itself because of its reluctance to leave the decision — as our holding today reaffirms it must — to an officer within the control of the executive branch.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE MIKE SYNAR, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant,

UNITED STATES SENATE,
SPEAKER AND BIPARTISAN LEADERSHIP GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES,
COMPTROLLER GENERAL OF THE UNITED STATES,

Intervenors.

Civil Action No. 85-3945

FILED

FEB 7 1986

JAMES E. DAVEY, Clerk

NATIONAL TREASURY EMPLOYEES UNION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant,

UNITED STATES SENATE,
SPEAKER AND BIPARTISAN LEADERSHIP GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES,
COMPTROLLER GENERAL OF THE UNITED STATES,

Intervenors.

Civil Action No. 85-4106

ORDER

Upon consideration of the pending dispositive motions filed by the parties in the above actions, the memoranda of points and authorities in support thereof and in

opposition thereto, and the entire record herein, and all parties having been heard in open court thereon, and for the reasons stated in the accompanying opinion, it is by the court this 7th day of February, 1986,

ORDERED that the automatic deficit reduction process established by the Balanced Budget and Emergency Deficit Control Act of 1985, under which the President is required to issue a sequestration order implementing the budget reduction specifications of a report prepared by the Comptroller General, be, and hereby is, declared unconstitutional on the ground that it vests executive power in the Comptroller General, an officer removable by Congress; and it is further

ORDERED that the presidential sequestration order issued on February 1, 1986 pursuant to the unconstitutional automatic deficit reduction process be, and hereby is, declared without legal force and effect; and it is further

ORDERED that such action is without prejudice to implementation of the alternate deficit reduction process specifically set forth in section 274(f) of the Act to cover the eventuality of the invalidation declared above;

ORDERED, pursuant to subsection 274(e) of the Act, that the effect of this judgment be, and hereby is, stayed during the pendency of any appeal taken under subsection 274(b) of the Act.

Antonin Scalia, Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit

Norma Holloway Johnson, District Judge of the United States District Court for the District of Columbia

Oliver Gasch, Senior District Judge of the United States District Court for the District of Columbia

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE MIKE SYNAR, et al., Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. 85-3945
NATIONAL TREASURY EMPLOYEES UNION, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Civil Action No. 85-4106

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that intervening-defendant Charles A. Bowsher, the Comptroller General of the United States, appeals to the Supreme Court of the United States from the order entered in these actions on February 7, 1986, declaring that the deficit reduction process established by the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1037 ("the Act"), is unconstitutional on the ground that it vests executive power in the Comptroller General, an officer

removable by Congress, and that the presidential sequestration order issued on February 1, 1986 pursuant to that deficit reduction process is without legal force and effect.

This appeal is taken pursuant to Section 274(b) of the Act.

Respectfully submitted,

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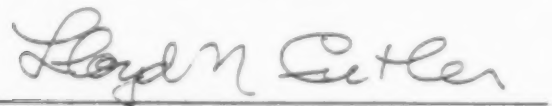

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February 7, 1986

Ninety-ninth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Thursday, the third day of January, one thousand nine hundred and eighty-five

Joint Resolution

Increasing the statutory limit on the public debt.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof "$1,847,800,000,000, or $2,078,700,000,000 on and after October 1, 1985,".

SEC. 2. MINIMUM CORPORATE TAX BY CORPORATIONS.

(a) Notwithstanding any other provision of this joint resolution, the Senate Committee on Finance is directed to report to the Senate by July 1, 1986, legislation providing for payment of an alternative minimum corporate tax by corporations on the broadest feasible definition of income to assure that all of those with economic income pay their fair share of taxes: *Provided,* That said alternative minimum corporate tax shall take effect for corporate tax years commencing on or after October 1, 1986. The revenue raised by this tax shall be applied to reduce the Federal deficit.

(b) Notwithstanding any other provision of this joint resolution, the Committee on Ways and Means is directed to report to the House of Representatives legislation providing for payment of an alternative minimum corporate tax by corporations based upon the broadest feasible definition of income to assure that all of those with economic income pay their fair share of taxes: *Provided,* That, the Committee on Ways and Means shall report such legislation prior to October 1, 1986.

SEC. 3. ACHILLE LAURO HIJACKING.

(a) The Senate finds that—

(1) the four men identified as the hijackers of the Achille Lauro were responsible for brutally murdering an innocent American citizen, Leon Klinghoffer, and for terrorizing hundreds of innocent crew members and passengers for two days;

(2) the United States urges all countries to aid in the swift apprehension, prosecution, and punishment of the terrorists; and

(3) the United States should not tolerate any country providing safe harbor or safe passage to the terrorists.

(b) It is the sense of the Senate that—

(1) the United States demands that no country provide safe harbor or safe passage to these terrorists;

(2) the United States expects full cooperation of all countries in the apprehension, prosecution, and punishment of these terrorists;

(3) the United States cannot condone the release of terrorists or the making of concessions to terrorists; and

(4) the United States identify those individuals responsible for the seizure of the Achille Lauro and the cold-blooded murder of

Leon Klinghoffer, as well as those countries and groups that aid and abet such terrorist activities, and take the strongest measures to ensure that those responsible for this brutal act against an American citizen are brought to justice.

TITLE II—DEFICIT REDUCTION PROCEDURES

SEC. 200. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Balanced Budget and Emergency Deficit Control Act of 1985".

(b) TABLE OF CONTENTS.—

PART A—CONGRESSIONAL BUDGET PROCESS

Subpart I—Congressional Budget

SEC. 201. CONGRESSIONAL BUDGET.

(a) DEFINITIONS.—

(1) Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new paragraphs:

"(6) The term 'deficit' means, with respect to any fiscal year, the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act (notwithstanding section 710(a) of the Social Security Act), for any fiscal year, the receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for such fiscal year and the taxes payable under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. Notwithstanding any other provision of law except to the extent provided by section 710(a) of the Social Security Act, the receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity for a fiscal year shall be included in total budget authority, total budget outlays, and total revenues and the amounts of budget authority and outlays set forth for each major functional category, for such fiscal year. Amounts paid by the Federal Financing Bank for the purchase of loans made or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.

"(7) The term 'maximum deficit amount' means—

"(A) with respect to the fiscal year beginning October 1, 1985, $171,900,000,000;

"(B) with respect to the fiscal year beginning October 1, 1986, $144,000,000,000;

"(C) with respect to the fiscal year beginning October 1, 1987, $108,000,000,000;

"(D) with respect to the fiscal year beginning October 1, 1988, $72,000,000,000;

"(E) with respect to the fiscal year beginning October 1, 1989, $36,000,000,000; and

"(F) with respect to the fiscal year beginning October 1, 1990, zero.

"(8) The term 'off-budget Federal entity' means any entity (other than a privately-owned Government-sponsored entity)—

"(A) which is established by Federal law, and

"(B) the receipts and disbursements of which are required by law to be excluded from the totals of—

"(i) the budget of the United States Government submitted by the President pursuant to section 1105 of title 31, United States Code, or

"(ii) the budget adopted by the Congress pursuant to title III of this Act.

"(9) The term 'entitlement authority' means spending authority described by section 401(c)(2)(C).

"(10) The term 'credit authority' means authority to incur direct loan obligations or to incur primary loan guarantee commitments.".

(2) Paragraph (2) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting before the comma the following: "or to collect offsetting receipts.".

(b) CONGRESSIONAL BUDGET PROCESS.—Title III of the Congressional Budget Act of 1974 is amended to read as follows:

"TITLE III—CONGRESSIONAL BUDGET PROCESS

"TIMETABLE

"SEC. 300. The timetable with respect to the congressional budget process for any fiscal year is as follows:

"On or before:	Action to be completed:
First Monday after January 3	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
February 25	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	Fiscal year begins.

"ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

"SEC. 301. (a) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.—On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year, and planning levels for each of the two ensuing fiscal years, for the following—

"(1) totals of new budget authority, budget outlays, direct loan obligations, and primary loan guarantee commitments;

"(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

"(3) the surplus or deficit in the budget;

"(4) new budget authority, budget outlays, direct loan obligations, and primary loan guarantee commitments for each major functional category, based on allocations of the total levels set forth pursuant to paragraph (1); and

"(5) the public debt.

"(b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION.—The concurrent resolution on the budget may—

"(1) set forth, if required by subsection (f), the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 should be achieved;

"(2) include reconciliation directives described in section 310;

"(3) require a procedure under which all or certain bills or resolutions providing new budget authority or new entitlement authority for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution or both required by such concurrent resolution to be reported in accordance with section 310(b); and

"(4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.

"(c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE THE EFFECT OF CHANGING ANY RULE OF THE HOUSE OF REPRESENTATIVES.—If the Committee on the Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

"(d) VIEWS AND ESTIMATES OF OTHER COMMITTEES.—On or before February 25 of each year, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a) and (b) which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946. Any other committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a) and (b) which relate to matters within its jurisdiction or functions.

"(e) HEARINGS AND REPORT.—In developing the concurrent resolution on the budget referred to in subsection (a) for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the

general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (d) may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and levels of budget authority and outlays set forth in such concurrent resolution are designed to achieve any goals it is recommending. The report accompanying such concurrent resolution shall include, but not be limited to—

"(1) a comparison of revenues estimated by the committee with those estimated in the budget submitted by the President;

"(2) a comparison of the appropriate levels of total budget outlays and total new budget authority, total direct loan obligations, total primary loan guarantee commitments, as set forth in such concurrent resolution, with those estimated or requested in the budget submitted by the President;

"(3) with respect to each major functional category, an estimate of budget outlays and an appropriate level of new budget authority for all proposed programs and for all existing programs (including renewals thereof), with the estimate and level for existing programs being divided between permanent authority and funds provided in appropriation Acts, and with each such division being subdivided between controllable amounts and all other amounts;

"(4) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;

"(5) the economic assumptions and objectives which underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and objectives which the committee considered;

"(6) projections (not limited to the following), for the period of five fiscal years beginning with such fiscal year, of the estimated levels of total budget outlays and total new budget authority, the estimated revenues to be received, and the estimated surplus or deficit, if any, for each fiscal year in such period, and the estimated levels of tax expenditures (the tax expenditures budget) by major functional categories;

"(7) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

"(8) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolution; and

"(9) allocations described in section 302(a).

"(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT.—

"(1) If, pursuant to section 4(c) of the Employment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b) of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

"(2) After the Congress has expressed its opinion pursuant to paragraph (1) as to the year in which the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 can be achieved, if, pursuant to section 4(e) of such Act, the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1) or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

"(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a)) set forth in such resolution in germane fashion in order to be consistent with the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946) which such amendment proposes can be achieved by the year specified in such amendment.

"(g) COMMON ECONOMIC ASSUMPTIONS.—The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement is based.

"(h) BUDGET COMMITTEES CONSULTATION WITH COMMITTEES.—The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees.

"(i) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.—

"(1)(A) Except as provided in paragraph (2), it shall not be in order in either the House of Representatives or the Senate to consider any concurrent resolution on the budget for a fiscal year under this section, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays for such fiscal year that is set forth in such concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 3(7), or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 3(7).

"(B) In the House of Representatives the point of order established under subparagraph (A) with respect to the consideration of a conference report or with respect to the consideration of a motion to concur, with or without an amendment or amendments, in a Senate amendment, the stage of disagreement having been reached, may be waived only by a vote of three-

fifths of the Members present and voting, a quorum being present.

"(2) Paragraph (1) of this subsection shall not apply if a declaration of war by the Congress is in effect.

"COMMITTEE ALLOCATIONS

"SEC. 302. (a) ALLOCATION OF TOTALS.—

"(1) For the House of Representatives, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays, total new budget authority, total entitlement authority, and total credit authority among each committee of the House of Representatives which has jurisdiction over laws, bills and resolutions providing such new budget authority, such entitlement authority, or such credit authority. The allocation shall, for each committee, divide new budget authority, entitlement authority, and credit authority between amounts provided or required by law on the date of such conference report (mandatory or uncontrollable amounts), and amounts not so provided or required (discretionary or controllable amounts), and shall make the same division for estimated outlays that would result from such new budget authority.

"(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays, total new budget authority and new credit authority among each committee of the House of Representatives and the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

"(b) REPORTS BY COMMITTEES.—As soon as practicable after a concurrent resolution on the budget is agreed to—

"(1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House, (A) subdivide among its subcommittees the allocation of budget outlays, new budget authority, and new credit authority allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and (B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

"(2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made, (A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and (B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report to its House the subdivisions made by it pursuant to this subsection.

"(c) POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution, or amendment thereto, providing—

"(1) new budget authority for a fiscal year;

"(2) new spending authority as described in section 401(c)(2) for a fiscal year; or

"(3) new credit authority for a fiscal year;

within the jurisdiction of any committee which has received an appropriate allocation of such authority pursuant to subsection (a) for such fiscal year, unless and until such committee makes the allocation or subdivisions required by subsection (b), in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

"(d) SUBSEQUENT CONCURRENT RESOLUTIONS.—In the case of a concurrent resolution on the budget referred to in section 304, the allocations under subsection (a) and the subdivisions under subsection (b) shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

"(e) ALTERATION OF ALLOCATIONS.—At any time after a committee reports the allocations required to be made under subsection (b), such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.

"(f) LEGISLATION SUBJECT TO POINT OF ORDER.—

"(1) IN THE HOUSE OF REPRESENTATIVES.—After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, new entitlement authority effective during such fiscal year, or new credit authority for such fiscal year, or any conference report on any such bill or resolution, if—

"(A) the enactment of such bill or resolution as reported;

"(B) the adoption and enactment of such amendment; or

"(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate allocation made pursuant to subsection (a) for such fiscal year of new discretionary budget authority, new entitlement authority, or new credit authority to be exceeded.

"(2) IN THE SENATE.—At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 301(a) for a fiscal year, it shall not be in order in the Senate to consider any bill or resolution (including a conference report thereon), or any amendment to a bill or resolution, that provides for budget outlays or new budget authority in excess of the appropriate allocation of such outlays or authority reported under subsection (b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

"(g) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of this section, the levels of new budget authority, spending authority as described in section 401(c)(2), outlays, and new credit authority for a fiscal year shall be determined on the basis of estimates made

by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

"CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, NEW CREDIT AUTHORITY, OR CHANGES IN REVENUES OR THE PUBLIC DEBT LIMIT IS CONSIDERED

"SEC. 303. (a) IN GENERAL.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) as reported to the House or Senate which provides—

"(1) new budget authority for a fiscal year;

"(2) an increase or decrease in revenues to become effective during a fiscal year;

"(3) an increase or decrease in the public debt limit to become effective during a fiscal year;

"(4) new entitlement authority to become effective during a fiscal year; or

"(5) new credit authority for a fiscal year,

until the concurrent resolution on the budget for such fiscal year has been agreed to pursuant to section 301.

"(b) EXCEPTIONS.—Subsection (a) does not apply to any bill or resolution—

"(1) providing new budget authority which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or

"(2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.

After May 15 of any calendar year, subsection (a) does not apply in the House of Representatives to any general appropriation bill, or amendment thereto, which provides new budget authority for the fiscal year beginning in such calendar year.

"(c) WAIVER IN THE SENATE.—

"(1) The committee of the Senate which reports any bill or resolution (or amendment thereto) to which subsection (a) applies may at or after the time it reports such bill or resolution (or amendment), report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution (or amendment), and (B) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

"(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and minority leader or their designees, and the time on any debatable motion or appeal shall be limited to twenty minutes, to be equally divided between, and

controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

"(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) shall not apply with respect to the bill or resolution (or amendment thereto) to which the resolution so agreed to applies.

"PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

"SEC. 304. (a) IN GENERAL.—At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

"(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.—The provisions of section 301(i) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i) (and amendments thereto and conference reports thereon).

"PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

"SEC. 305. (a) PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE.—

"(1) When the Committee on the Budget of the House of Representatives has reported any concurrent resolution on the budget, it is in order at any time after the fifth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution by the Committee on the Budget has been available to Members of the House and, if applicable, after the first day (excluding Saturdays, Sundays, and legal holidays) following the day on which a report upon such resolution by the Committee on Rules pursuant to section 301(c) has been available to Members of the House (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not debatable. A motion to recommit

the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

"(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of up to four hours for debate on economic goals and policies.

"(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the House sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

"(5) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

"(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

"(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

"(b) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS.—

"(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 50 hours, except that with respect to any concurrent resolution referred to in section 304(a) all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(2) Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the

manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

"(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.

"(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

"(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.

"(6) Notwithstanding any other rule, an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

"(c) ACTION ON CONFERENCE REPORTS IN THE SENATE.—

"(1) The conference report on any concurrent resolution on the budget shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

"(2) During the consideration in the Senate of the conference report on any concurrent resolution on the budget, debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their

designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

"(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

"(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

"(d) REQUIRED ACTION BY CONFERENCE COMMITTEE.—If at the end of 7 days (excluding Saturdays, Sundays, and legal holidays) after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session—

"(1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or

"(2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution and inserts a substitute text.

"(e) CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE.—It shall not be in order in the Senate to vote on the question of agreeing to—

"(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent; or

"(2) a conference report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

"LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

"SEC. 306. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been

reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

"HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COMPLETED BY JUNE 10

"SEC. 307. On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills providing new budget authority under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

"REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

"SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, OR NEW CREDIT AUTHORITY, OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES.—

"(1) Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2), or new credit authority, or providing an increase or decrease in revenues or tax expenditures for a fiscal year, the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office—

"(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 302(b) for the most recently agreed to concurrent resolution on the budget for such fiscal year;

"(B) including an identification of any new spending authority described in section 401(c)(2) which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;

"(C) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority, budget outlays, spending authority, revenues, tax expenditures, direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

"(D) containing an estimate by the Congressional Budget Office of the level of new budget authority for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

"(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or resolution provides new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2), or new credit

authority, or provides an increase or decrease in revenues for a fiscal year, the statement of managers accompanying such conference report shall contain the information described in paragraph (1), if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

"(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION.—

"(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly basis detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority, new spending authority described in section 401(c)(2), or new credit authority, or providing an increase or decrease in revenues or tax expenditures for a fiscal year. Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding such fiscal year.

"(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports. Such reports—

"(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

"(B) shall include, but are not limited to, summaries of tabulations provided under subsection (b)(1); and

"(C) shall be based on information provided under subsection (b)(1) without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

"(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION.—As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year—

"(1) total new budget authority and total budget outlays for each fiscal year in such period;

"(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period;

"(3) tax expenditures for each fiscal year in such period;

"(4) entitlement authority for each fiscal year in such period; and

"(5) credit authority for each fiscal year in such period.

"HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS

"SEC. 309. It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the

House of Representatives has approved annual appropriation bills providing new budget authority under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

"RECONCILIATION

"SEC. 310. (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.—A concurrent resolution on the budget for any fiscal year, to the extent necessary to effectuate the provisions and requirements of such resolution, shall—

"(1) specify the total amount by which—

"(A) new budget authority for such fiscal year;

"(B) budget authority initially provided for prior fiscal years;

"(C) new entitlement authority which is to become effective during such fiscal year; and

"(D) credit authority for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

"(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

"(3) specify the amounts by which the statutory limit on the public debt is to be changed and direct the committee having jurisdiction to recommend such change; or

"(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

"(b) LEGISLATIVE PROCEDURE.—If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a), and—

"(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

"(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit such recommendations to the Committee on the Budget of its House, which, upon receiving all such recommendations, shall report to its House reconciliation legislation carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.

"(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.—Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1) and (2) of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions—

"(1) if—

"(A) the amount of the changes of the type described in paragraph (1) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under such paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection, and

"(B) the amount of the changes of the type described in paragraph (2) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; and

"(2) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection.

"(d) LIMITATION ON AMENDMENTS TO RECONCILIATION BILLS AND RESOLUTIONS.—

"(1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of increasing any specific budget outlays above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority or new entitlement authority may be in order.

"(2) It shall not be in order in the Senate to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided (for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent to

any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.

"(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.

"(4) For purposes of this section, the levels of budget outlays and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

"(5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.

"(e) PROCEDURE IN THE SENATE.—

"(1) Except as provided in paragraph (2), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b) and conference reports thereon.

"(2) Debate in the Senate on any reconciliation bill reported under subsection (b), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

"(f) COMPLETION OF RECONCILIATION PROCESS.—

"(1) IN GENERAL.—Congress shall complete action on any reconciliation bill or reconciliation resolution reported under subsection (b) not later than June 15 of each year.

"(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

"(g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.

"NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

"SEC. 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER.—Except as provided by subsection (b), after the Congress has completed action

on a concurrent resolution on the budget for a fiscal year, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if—

"(1) the enactment of such bill or resolution as reported;

"(2) the adoption and enactment of such amendment; or

"(3) the enactment of such bill or resolution in the form recommended in such conference report;

would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues set forth in such concurrent resolution or, in the Senate, would otherwise result in a deficit for such fiscal year that exceeds the maximum deficit amount specified for such fiscal year in section 3(7) (except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection).

"(b) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.—Subsection (a) shall not apply in the House of Representatives to any bill, resolution, or amendment which provides new budget authority or new entitlement authority effective during such fiscal year, or to any conference report on any such bill or resolution, if—

"(1) the enactment of such bill or resolution as reported;

"(2) the adoption and enactment of such amendment; or

"(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not cause the appropriate allocation of new discretionary budget authority or new entitlement authority made pursuant to section 302(a) for such fiscal year, for the committee within whose jurisdiction such bill, resolution, or amendment falls, to be exceeded.

"(c) DETERMINATION OF BUDGET LEVELS.—For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.".

Subpart II—Amendments to Title IV of the Congressional Budget Act of 1974

SEC. 211. NEW SPENDING AUTHORITY.

Section 401 of the Congressional Budget Act of 1974 is amended to read as follows:

"BILLS PROVIDING NEW SPENDING AUTHORITY

"SEC. 401. (a) CONTROLS ON LEGISLATION PROVIDING SPENDING AUTHORITY.—It shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or conference report, as reported to its House which provides new spending authority described in subsection (c)(2) (A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, conference report, or amendment also provides

that such new spending authority as described in subsection (c)(2)(A) or (B) is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

"(b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.—

"(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

"(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection (c)(2)(C) which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

"(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

"(c) DEFINITIONS.—

"(1) For purposes of this section, the term 'new spending authority' means spending authority not provided by law on the effective date of this Act, including any increase in or addition to spending authority provided by law on such date.

"(2) For purposes of paragraph (1), the term 'spending authority' means authority (whether temporary or permanent)—

"(A) to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts;

"(B) to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31 of the United States Code) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts;

"(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to

persons or governments who meet the requirements established by such law;

"(D) to forego the collection by the United States of proprietary offsetting receipts, the budget authority for which is not provided in advance by appropriation Acts to offset such foregone receipts; and

"(E) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (A), (B), (C), or (D), the budget authority for which is not provided in advance by appropriation Acts.

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

"(d) EXCEPTIONS.—

"(1) Subsections (a) and (b) shall not apply to new spending authority if the budget authority for outlays which will result from such new spending authority is derived—

"(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act); or

"(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

"(2) Subsections (a) and (b) shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.

"(3) Subsections (a) and (b) shall not apply to new spending authority to the extent that—

"(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act), or (ii) a wholly owned Government corporation (as defined in section 101 of such Act) which is specifically exempted by law from compliance with any or all of the provisions of that Act, as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985; or

"(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.".

SEC. 212. CREDIT AUTHORITY.

Section 402 of the Congressional Budget Act of 1974 is amended to read as follows:

"LEGISLATION PROVIDING NEW CREDIT AUTHORITY

"SEC. 402. (a) CONTROLS ON LEGISLATION PROVIDING NEW CREDIT AUTHORITY.—It shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or conference report, as reported to its House, or any amendment which

provides new credit authority described in subsection (b)(1), unless that bill, resolution, conference report, or amendment also provides that such new credit authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

"(b) DEFINITION.—For purposes of this Act, the term 'new credit authority' means credit authority (as defined in section 3(10) of this Act) not provided by law on the effective date of this section, including any increase in or addition to credit authority provided by law on such date.".

SEC. 213. DESCRIPTION BY CONGRESSIONAL BUDGET OFFICE.

(a) CONGRESSIONAL BUDGET OFFICE ANALYSIS.—Section 403(a) of the Congressional Budget Act of 1974 is amended by striking out "and" at the end of paragraph (2), by striking out the period and inserting "; and" at the end of paragraph (3), and by inserting at the end thereof the following new paragraph:

"(4) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.".

(b) CONFORMING AMENDMENT.—The second sentence of section 403(a) of such Act is amended by striking out "estimates and comparison" and inserting in lieu thereof "estimates, comparison, and description".

SEC. 214. GENERAL ACCOUNTING OFFICE STUDY; OFF-BUDGET AGENCIES; MEMBER USER GROUP.

Title IV of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new sections:

"STUDY BY THE GENERAL ACCOUNTING OFFICE OF FORMS OF FEDERAL FINANCIAL COMMITMENT THAT ARE NOT REVIEWED ANNUALLY BY CONGRESS

"SEC. 405. The General Accounting Office shall study those provisions of law which provide spending authority as described by section 401(c)(2) and which provide permanent appropriations, and report to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after the effective date of this section. Such report shall be revised from time to time.

"OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

"SEC. 406. (a) Notwithstanding any other provision of law, budget authority, credit authority, and estimates of outlays and receipts for activities of the Federal budget which are off-budget immediately prior to the date of enactment of this section, not including activities of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, shall be included in a budget submitted pursuant to section 1105 of title 31, United States Code, and in a concurrent resolution on the budget reported pursuant to section 301 or section 304 of this Act and shall be considered, for purposes of this Act, budget authority, outlays, and spending authority in accordance with definitions set forth in this Act.

"(b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal agency shall be treated as a means of financing such

agency for purposes of section 1105 of title 31, United States Code, and for purposes of this Act.

"MEMBER USER GROUP

"SEC. 407. The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.".

Subpart III—Additional Provisions to Improve Budget Procedures

SEC. 221. CONGRESSIONAL BUDGET OFFICE.

(a) REPORTING DATE.—Section 202(f)(1) of the Congressional Budget Act of 1974 is amended by striking out "April 1" in the first sentence and inserting in lieu thereof "February 15".

(b) ADDITIONAL REPORTING REQUIREMENT.—Section 202(f) of such Act is further amended by adding at the end thereof the following new paragraph:

"(3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing (A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and (B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.".

(c) STUDIES.—Section 202 of such Act is further amended by adding at the end thereof the following new subsection:

"(h) STUDIES.—The Director shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.".

SEC. 222. CURRENT SERVICES BUDGET FOR CONGRESSIONAL BUDGET PURPOSES.

(a) CURRENT SERVICES BUDGET.—The first sentence of section 1109(a) of title 31, United States Code, is amended by striking out "Before November 11 of each year" and inserting in lieu thereof "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)".

(b) JOINT ECONOMIC COMMITTEE REVIEW.—Section 1109(b) of title 31, United States Code, is amended by striking out "January 1" and inserting in lieu thereof "March 1".

SEC. 223. STUDY OF OFF-BUDGET AGENCIES.

Section 606 of the Congressional Budget Act of 1974 is repealed

SEC. 224. CHANGES IN FUNCTIONAL CATEGORIES.

Section 1104(c) of title 31, United States Code, is amended by adding at the end thereof the following new sentence: "Committees

of the House of Representatives and Senate shall receive prompt notification of all such changes.".

SEC. 225. JURISDICTION OF COMMITTEE ON GOVERNMENT OPERATIONS.

Clause 1(j) of Rule X of the Rules of the House of Representatives is amended by inserting after item (5) the following new item:

"(6) Measures providing for off-budget treatment of Federal agencies or programs.".

SEC. 226. CONTINUING STUDY OF CONGRESSIONAL BUDGET PROCESS.

Clause 3 of Rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following:

"(i) The Committee on Rules shall have the function of reviewing and studying, on a continuing basis, the congressional budget process, and the committee shall, from time to time, report its findings and recommendations to the House.".

SEC. 227. EARLY ELECTION OF COMMITTEES OF THE HOUSE.

Clause 6(a)(1) of Rule X of the Rules of the House of Representatives is amended by striking out "at" and inserting in lieu thereof "within the seventh calendar day beginning after", and by adding at the end thereof the following new sentence: "It shall always be in order to consider resolutions recommended by the respective party caucuses to change the composition of standing committees.".

SEC. 228. RESCISSIONS AND TRANSFERS IN APPROPRIATION BILLS.

(a) RESCISSIONS.—Clause 2(b) of Rule XXI of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and except rescissions of appropriations contained in appropriation Acts".

(b) TRANSFERS.—Clause 6 of Rule XXI of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and shall not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated, reported by the Committee on Appropriations".

Subpart IV—Technical and Conforming Amendments

SEC. 231. TABLE OF CONTENTS.

The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 with respect to title III is amended to read as follows:

"TITLE III—CONGRESSIONAL BUDGET PROCESS

"Sec. 310. Reconciliation.
"Sec. 311. New budget authority, new spending authority, and revenue legislation must be within appropriate levels.".

SEC. 232. ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) by striking out the item relating to section 402 and inserting in lieu thereof the following new item:

"Sec. 402. Legislation providing new credit authority.";

(2) by inserting after the item relating to section 404 the following new items:

"Sec. 405. Study by the General Accounting Office of forms of Federal financial commitment that are not reviewed annually by Congress.
"Sec. 406. Off-budget agencies, programs, and activities.
"Sec. 407. Member user group."; and

(3) by striking out the item relating to section 606.

(b) TECHNICAL AMENDMENT.—Paragraph (4) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) by adding "and" after the semicolon at the end of subparagraph (A);

(2) by striking out subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) TECHNICAL AMENDMENT.—Subparagraph (2) of clause 4(b) of rule X of the Rules of the House of Representatives is amended by striking out "first concurrent resolution" and inserting in lieu thereof "concurrent resolutions".

(d) TECHNICAL AMENDMENT.—Clause 4(g) of rule X of the Rules of the House of Representatives is amended by striking out "March 15" and inserting in lieu thereof "February 25".

(e) TECHNICAL AMENDMENT.—Clause 2(l)(1) of rule XI of the Rules of the House of Representatives is amended—

(1) by striking out "(except as provided in subdivision (C))" in subparagraph (A) thereof; and

(2) by repealing subparagraph (C) thereof.

(f) TECHNICAL AMENDMENT.—Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is amended by inserting "(1)" after "section 308(a)", and by striking out "new budget authority or new or increased tax expenditures" and inserting in lieu thereof "new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2) of such Act, new credit authority, or an increase or decrease in revenues or tax expenditures".

(g) TECHNICAL AMENDMENT.—Rule XLIX of the Rules of the House of Representatives is amended by striking out ", 304, or 310" in clause 1 and inserting in lieu thereof "or 304".

(h) TECHNICAL AMENDMENT.—Clause 1(e)(2) of Rule X of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PART B—BUDGET SUBMITTED BY THE PRESIDENT

SEC. 241. SUBMISSION OF PRESIDENT'S BUDGET; MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.

(a) SUBMISSION OF PRESIDENT'S BUDGET.—The first sentence of section 1105(a) of title 31, United States Code, is amended by striking out "During the first 15 days of each regular session of Congress" and inserting in lieu thereof the following: "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)".

(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.—Section 1105 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared on the basis of the best estimates then available, in such a manner as to ensure that the deficit for such fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974.

"(2) The deficit set forth in the budget so transmitted for any fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974, with budget outlays and Federal revenues at such levels as the President may consider most desirable and feasible.

"(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.".

SEC. 242. SUPPLEMENTAL BUDGET ESTIMATES AND CHANGES.

(a) CHANGE IN DATE OF SUBMISSION.—The first sentence of section 1106(b) of title 31, United States Code, is amended by striking out "April 11 and".

(b) REVISIONS AND SUPPLEMENTAL SUMMARIES.—Section 1106 of title 31 of such Code is further amended by adding at the end thereof the following new subsection:

"(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.".

PART C—EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

SEC. 251. REPORTING OF EXCESS DEFICITS.

(a) INITIAL ESTIMATES, DETERMINATIONS, AND REPORT BY OMB AND CBO.—

(1) ESTIMATES AND DETERMINATIONS.—The Director of the Office of Management and Budget and the Director of the Congressional Budget Office (in this part referred to as the "Directors") shall with respect to each fiscal year—

(A) estimate the budget base levels of total revenues and budget outlays that may be anticipated for such fiscal year as of August 15 of the calendar year in which such fiscal

year begins (or as of January 10, 1986, in the case of the fiscal year 1986),

(B) determine whether the projected deficit for such fiscal year will exceed the maximum deficit amount for such fiscal year and whether such deficit excess will be greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), and

(C) estimate the rate of real economic growth that will occur during such fiscal year, the rate of real economic growth that will occur during each quarter of such fiscal year, and the rate of real economic growth that will have occurred during each of the last two quarters of the preceding fiscal year.

(2) REPORT.—The Directors jointly shall report to the Comptroller General on August 20 of the calendar year in which such fiscal year begins (or on January 15, 1986, in the case of the fiscal year 1986), estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year, stating whether such excess is greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative real economic growth, and specifying (if the excess is greater than $10,000,000,000, or zero in the case of fiscal years 1986 and 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year, in accordance with the succeeding provisions of this part, in order to eliminate such excess.

(3) DETERMINATION OF REDUCTIONS.—The amounts and percentages by which such accounts must be reduced during a fiscal year shall be determined as follows:

(A)(i) If the deficit excess for the fiscal year is greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), such deficit excess shall be divided into halves.

(ii) In the case of fiscal year 1986, the amount of such excess—

(I) shall be multiplied by seven twelfths before being divided into halves in accordance with clause (i), and

(II) shall not exceed $11,700,000,000.

(B) Subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in this section and in sections 255, 256, and 257, the reductions necessary to eliminate one-half of the deficit excess for the fiscal year (as adjusted under subparagraph (A)(ii) in the case of fiscal year 1986) shall be made in outlays under accounts within major functional category 050 (in this part referred to as outlays under "defense programs"), and the reductions necessary to eliminate the other half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986) shall be made in outlays under other accounts of the Federal Government (in this part referred to as outlays under "non-defense programs").

(C)(i) The total amount by which outlays for automatic spending increases scheduled to take effect during the fiscal year are to be reduced shall be determined in accordance with clause (ii) of this subparagraph.

(ii) Each such automatic spending increase shall be reduced—

(I) to zero (a uniform percentage reduction of 100 percent), or

(II) by a uniform percentage reduction of less than 100 percent calculated in a manner to reduce total outlays for the fiscal year by one-half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986), if the elimination of all such increases would reduce total outlays for the fiscal year by more than one-half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986) for the fiscal year.

(D) The total amount of the outlay reductions determined under subparagraph (C) shall be divided into two amounts:

(i) an amount equal to the outlay reductions attributable to programs specified in subparagraph (A) of section 257(l); and

(ii) an amount equal to the outlay reductions attributable to programs specified in subparagraph (B) of section 257(l).

(E)(i) For purposes of subparagraph (B), one-half of the amount of the reductions determined under clause (i) of subparagraph (D) shall be credited as reductions in outlays under defense programs, and the total amount of reductions in outlays under defense programs required under subparagraph (B) shall be reduced accordingly.

(ii) Sequestration of new budget authority and unobligated balances to achieve the remaining reductions in outlays under defense programs required under subparagraph (B) shall be determined as provided in subsection (d).

(F)(i) For purposes of subparagraph (B)—

(I) one-half of the amount of the reductions determined under clause (i) of subparagraph (D), and

(II) the amount of the reductions determined under clause (ii) of subparagraph (D),

shall be credited as reductions in outlays under non-defense programs, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced accordingly.

(ii) The maximum reduction permissible for each program to which an exception, limitation, or special rule set forth in subsection (c) or (f) of section 256 applies shall be determined, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced by the amount of the reduction determined with respect to each such program.

(iii)(I) Except as provided in subclause (II), the maximum reduction permissible for each of the programs to which the special rules set forth in sections 256(d) and 256(k) apply shall be determined, and the total amount of outlays under non-defense programs required under subparagraph (B)

shall be reduced by the amount of the maximum reductions so determined.

(II) If the maximum reduction determined in accordance with subclause (I) with respect to the programs to which that subclause relates would reduce outlays for such programs by an amount in excess of the remaining amount of the reduction in outlays in non-defense programs required under subparagraph (B), outlays for such programs shall instead be reduced proportionately by such lesser percentage as will achieve such remaining required reductions.

(iv)(I) Sequestrations and reductions under the remaining non-defense programs shall be applied on a uniform percentage basis so as to reduce new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974 to the extent necessary to achieve any remaining required outlay reductions.

(II) For purposes of determining reductions under subclause (I), any reduction in outlays of the Commodity Credit Corporation under an order issued by the President under section 252 for a fiscal year, with respect to contracts entered into during that fiscal year, that will occur during the succeeding fiscal year, shall be credited as reductions in outlays for the fiscal year in which the order is issued.

The determination of which accounts are within major functional category 050 and which are not, for purposes of subparagraph (B), shall be made by the Directors in a manner consistent with the budget submitted by the President for the fiscal year 1986; except that for such purposes no part of the accounts entitled "Federal Emergency Management Agency, Salaries and expenses (58-0100-0-1-999)" and "Federal Emergency Management Agency, Emergency management planning and assistance (58-0101-0-1-999)" shall be treated as being within functional category 050.

(4) ADDITIONAL SPECIFICATIONS.—The report submitted under paragraph (2) must also specify (with respect to the fiscal year involved)—

(A) the amount of the automatic spending increase (if any) which is scheduled to take effect in the case of each program providing for such increases, the amount and percentage by which such increase is to be reduced, the amount by which the deficit excess (as adjusted under paragraph (3)(A)(ii), in the case of fiscal year 1986) will be reduced as a result of the elimination or reduction of automatic spending increases (stated separately for increases under programs listed in subparagraph (A) of section 257(1) and increases under programs listed in subparagraph (B) of that section), and the amount (if any) of each such increase, stated in terms of percentage points, which will take effect after reduction under this part;

(B) the amount of the savings (if any) to be achieved in the application of each of the special rules set forth in subsections (c) through (l) of section 256, along with a statement of (i) the new Federal matching rate resulting from the application of subsection (e) of that section, and (ii) the amount of the percentage reduction in payments to the

States under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(C)(i) for defense programs, by account and by program, project, and activity within each account, the reduction (stated in terms of both percentage and amount) in new budget authority and unobligated balances, together with the estimated outlay reductions resulting therefrom; and

(ii) for non-defense programs, by account, the reduction, stated in terms of both percentage and amount, in new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, together with the estimated outlay reductions resulting therefrom.

(5) BASIS FOR DIRECTORS' ESTIMATES, DETERMINATIONS, AND SPECIFICATIONS.—The estimates, determinations, and specifications of the Directors under the preceding provisions of this subsection and under subsection (c)(1) shall utilize the budget base, criteria, and guidelines set forth in paragraph (6) and in sections 255, 256, and 257. In the event that the Directors are unable to agree on any items required to be set forth in the report, they shall average their differences to the extent necessary to produce a single, consistent set of data that achieves the required deficit reduction. The report of the Directors shall also indicate the amount initially proposed for each averaged item by each Director.

(6) BUDGET BASE.—In computing the amounts and percentages by which accounts must be reduced during a fiscal year as set forth in any report required under this subsection for such fiscal year, the budget base shall be determined by—

(A) assuming (subject to subparagraph (C)) the continuation of current law in the case of revenues and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974;

(B) assuming, in the case of all accounts to which subparagraph (A) does not apply, appropriations equal to the prior year's appropriations except to the extent that annual appropriations or continuing appropriations for the entire fiscal year have been enacted;

(C) assuming that expiring provisions of law providing revenues and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974 do expire, except that excise taxes dedicated to a trust fund and agricultural price support programs administered through the Commodity Credit Corporation are extended at current rates; and

(D) assuming (i) that Federal pay adjustments for statutory pay systems (I) will be as recommended by the President, but (II) will in no case result in a reduction in the levels of pay in effect immediately before such adjustments; and (ii) that medicare spending levels for inpatient hospital services will be based upon the regulations most recently issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act.

Deferrals proposed under section 1013 of the Impoundment Control Act of 1974 during the period beginning October 1 of

such fiscal year (or the date of the enactment of this joint resolution in the case of fiscal year 1986) and ending with the date on which the final order is issued under section 252(b) for such fiscal year (or February 1, 1986, in the case of fiscal year 1986) shall not be taken into account in determining such budget base.

(b) REPORT TO PRESIDENT AND CONGRESS BY COMPTROLLER GENERAL.—

(1) REPORT TO BE BASED ON OMB-CBO REPORT.—The Comptroller General shall review and consider the report issued by the Directors for the fiscal year and, with due regard for the data, assumptions, and methodologies used in reaching the conclusions set forth therein, shall issue a report to the President and the Congress on August 25 of the calendar year in which such fiscal year begins (or on January 20, 1986, in the case of the fiscal year 1986), estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year (adjusted in accordance with subsection (a)(3)(A)(ii), in the case of fiscal year 1986), stating whether such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986) will be greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative economic growth, and specifying (if the excess is greater than $10,000,000,000, or zero in the case of fiscal years 1986 and 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year in order to eliminate such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986). Such report shall be based on the estimates, determinations, and specifications of the Directors and shall utilize the budget base, criteria, and guidelines set forth in subsection (a)(6) and in sections 255, 256, and 257.

(2) CONTENTS OF REPORT.—The report of the Comptroller General under this subsection shall—

(A) provide for the determination of reductions in the manner specified in subsection (a)(3); and

(B) contain estimates, determinations, and specifications for all of the items contained in the report submitted by the Directors under subsection (a).

Such report shall explain fully any differences between the contents of such report and the report of the Directors.

(c) REVISED ESTIMATES, DETERMINATIONS, AND REPORTS.—

(1) REPORT BY OMB AND CBO.—On October 5 of the fiscal year (except in the case of the fiscal year 1986), the Directors shall submit to the Comptroller General a revised report—

(A) indicating whether and to what extent, as a result of laws enacted and regulations promulgated after the submission of their initial report under subsection (a), the excess deficit (adjusted in accordance with subsection (a)(3)(A)(ii), in the case of fiscal year 1986) identified in the report

submitted under such subsection has been eliminated, reduced, or increased, and

(B) adjusting the determinations made under subsection (a) to the extent necessary.

The revised report submitted under this paragraph shall contain estimates, determinations, and specifications for all of the items contained in the initial report and authorized under subsection (d)(3)(D)(i) and shall be based on the same economic and technical assumptions, employ the same methodologies, and utilize the same definition of the budget base and the same criteria and guidelines as those used in the report submitted by the Directors under subsection (a) (except that subdivision (II) of paragraph (6)(D)(i) of such subsection shall not apply), and shall provide for the determination of reductions in the manner specified in subsection (a)(3).

(2) REPORT BY COMPTROLLER GENERAL.—

(A) On October 10 of the fiscal year (except in the case of the fiscal year 1986), the Comptroller General shall submit to the President and the Congress a report revising the report submitted by the Comptroller General under subsection (b), adjusting the estimates, determinations, and specifications contained in that report to the extent necessary in the light of the revised report submitted to him by the Directors under paragraph (1) of this subsection.

(B) The revised report of the Comptroller General under this paragraph shall provide for the determination of reductions as specified in subsection (a)(3) and shall contain all of the estimates, determinations, and specifications required (in the case of the report submitted under subsection (b)) pursuant to subsection (b)(2)(B).

(d) SEQUESTRATION OF DEFENSE PROGRAMS.—

(1) DETERMINATION OF UNIFORM PERCENTAGE.—The total amount of reductions in outlays under defense programs required for a fiscal year under subsection (a)(3)(B) after the reduction under subsection (a)(3)(E)(i) shall be calculated as a percentage of the total amount of outlays for the fiscal year estimated to result from new budget authority and unobligated balances for defense programs.

(2) SEQUESTRATION OF NEW BUDGET AUTHORITY AND UNOBLIGATED BALANCES.—

(A) Sequestration to achieve the remaining reduction in outlays under defense programs shall be made by reducing new budget authority and unobligated balances (if any) in each program, project, or activity under accounts within defense programs by the percentage determined under paragraph (1), computed on the basis of the combined outlay rate for new budget authority and unobligated balances for such program, project, or activity determined under subparagraph (B).

(B)(i) The combined outlay rate for new budget authority and unobligated balances for a program, project, or activity shall be determined by the Directors from data then available to them as supplemented by additional data from the heads of the appropriate departments or agencies of the executive branch. If the outlay rate for unobligated balances is not available for any program, project, or activity,

the outlay rate used shall be the outlay rate for new budget authority.

(ii) The weighted average (by budget authority) for the combined outlay rates so determined for all the programs, projects, and activities within an account shall be compared to the historical outlay rates for that account previously estimated by the Directors. If the Directors determine that it is necessary to make the combined outlay rate for a program, project, or activity as determined under the first sentence of this subparagraph consistent with the historical rates for such account, they may adjust the outlay rate for such program, project, or activity.

(C) For purposes of this paragraph:

(i) The term "outlay rate", with respect to any program, project, or activity, means—

(I) the ratio of outlays resulting in the fiscal year involved from new budget authority for such program, project, or activity to such new budget authority; or

(II) the ratio of outlays resulting in the fiscal year involved from unobligated balances for such program, project, or activity to such unobligated balances.

(ii) The term "combined outlay rate", with respect to any program, project, or activity, means the weighted average (by budget authority) of the ratios determined under subclauses (I) and (II) of clause (i) for such program, project, or activity.

(3) SEQUESTRATION FROM NATIONAL DEFENSE ACCOUNTS THROUGH TERMINATION OR MODIFICATION OF EXISTING CONTRACTS.—

(A)(i) Subject to the provisions of this paragraph, the President, with respect to any fiscal year, may provide for—

(I) the termination or modification of an existing contract within any program, project, or activity within a account within major functional category 050; and

(II) the crediting, to the amount of new budget authority and unobligated balances otherwise required to be reduced from such program, project, or activity, of the net reduction achieved for the appropriate fiscal year by such termination or modification, based upon the combined outlay rate for such program, project, or activity determined under paragraph (2)(B).

(ii) The remaining required outlay reductions in such program, project, or activity shall be achieved by sequestering new budget authority and unobligated balances based upon the combined outlay rate for such program, project, or activity determined under paragraph (2)(B).

(B) Not later than September 5 of the calendar year in which the fiscal year begins (January 15 in the case of fiscal year 1986), the President shall transmit to the Comptroller General and the Committees on Armed Services and on Appropriations of the Senate and House of Representatives and make available to the Directors a report concerning the contracts proposed to be terminated or modified under this paragraph for such fiscal year. The report shall—

(i) identify the contracts proposed to be terminated or modified and the proposed date of termination or modification of each such contract;

(ii) identify the anticipated outlay savings for the fiscal year involved and the anticipated reduction in obligated balances with respect to each such proposed termination or modification, together with an explanation of the relationship between the obligated balances that could be cancelled and the estimated outlay savings resulting therefrom;

(iii) provide documentation of the anticipated savings in outlays and obligated balances; and

(iv) provide a complete rationale for the effect of each proposed termination or modification on the contract concerned and on the program, project, or activity involved.

(C) Not later than September 30 of the calendar year in which the fiscal year begins (February 15 in the case of fiscal year 1986), the Comptroller General shall certify to the President and the Congress, with respect to each contract which is proposed to be terminated or modified—

(i) whether the Comptroller General is able to verify that the estimated outlay savings for the fiscal year involved are achievable and would be achieved in that year; and

(ii) whether the ratio between the projected outlay savings and the anticipated reduction in obligated balances is reasonable.

(D)(i) In the case of a fiscal year other than fiscal year 1986, each proposed contract termination or modification described in subparagraph (A) with respect to which the certification by the Comptroller General under subparagraph (C) is affirmative (with respect to both clause (i) and clause (ii) of such subparagraph) shall be included in the report of the Directors under subsection (c)(1). The report shall include the information about each such contract described in subparagraph (B)(ii).

(ii) In the case of fiscal year 1986, each proposed contract termination or modification described in subparagraph (A) with respect to which the certification by the Comptroller General under subparagraph (C) is affirmative (with respect to both clause (i) and (ii) of such subparagraph) shall be included in the modification authorized by section 252(a)(6)(D)(iii) in the order issued by the President under section 252(a)(1) with respect to fiscal year 1986.

(iii) The authority of the President described in subparagraph (A) is not effective in the case of any proposed contract termination or modification with respect to which the certification by the Comptroller General under subparagraph (C) is not affirmative (with respect to both clause (i) and clause (ii) of such subparagraph).

(E) For any contract termination or modification proposed pursuant to this paragraph, the President shall certify to Congress, within thirty days after the effective date of the contract termination or modification, that the amounts proposed for deobligation under such contract have in fact been deobligated and cancelled.

(e) DATES FOR SUBMISSION OF REPORTS AND ISSUANCE OF ORDERS.—If the date specified for the submission of a report by the Directors or the Comptroller General under this section or for the issuance of an order by the President under section 252 falls on a Sunday or legal holiday, such report shall be submitted or such order issued on the following day.

(f) PRINTING OF REPORTS.—Each report submitted under this section shall be printed in the Federal Register on the date it is issued; and the reports of the Comptroller General submitted to the Congress under subsections (b) and (c)(2) shall be printed as documents of the House of Representatives and the Senate.

(g) EXCEPTION.—The preceding provisions of this section shall not apply if a declaration of war by the Congress is in effect.

SEC. 252. PRESIDENTIAL ORDER.

(a) ISSUANCE OF INITIAL ORDER.—

(1) IN GENERAL.—On September 1 following the submission of a report by the Comptroller General under section 251(b) which identifies an amount greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991) by which the deficit for a fiscal year will exceed the maximum deficit amount for such fiscal year (or on February 1, 1986, in the case of the fiscal year 1986), the President, in strict accordance with the requirements of paragraph (3) and section 251(a)(3) and (4) and subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in sections 255, 256, and 257, shall eliminate the full amount of the deficit excess (as adjusted by the Comptroller General in such report in accordance with section 251(a)(3)(A)(ii), in the case of fiscal year 1986) by issuing an order that (notwithstanding the Impoundment Control Act of 1974)—

(A) modifies or suspends the operation of each provision of Federal law that would (but for such order) require an automatic spending increase to take effect during such fiscal year, in such a manner as to prevent such increase from taking effect, or reduce such increase, in accordance with such report; and

(B) eliminates the remainder of such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986) by sequestering new budget authority, unobligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, and reducing obligation limitations, in accordance with such report—

(i) for funds provided in annual appropriation Acts, from each affected program, project, and activity (as set forth in the most recently enacted applicable appropriation Acts and accompanying committee reports for the program, project, or activity involved, including joint resolutions providing continuing appropriations and committee reports accompanying Acts referred to in such resolutions), applying the same reduction percentage as the percentage by which the account involved is reduced in the report submitted under section 251(b), or from each affected budget account if the program, project, or activity is not so set forth, and

(ii) for funds not provided in annual appropriation Acts, from each budget account activity as identified in

the program and financing schedules contained in the appendix to the Budget of the United States Government for that fiscal year, applying the same reduction percentage as the percentage by which the account is reduced in such report.

(2) SPECIAL SEQUESTRATION PROCEDURES FOR NATIONAL DEFENSE FOR FISCAL YEAR 1986.—

(A) IN GENERAL.—Notwithstanding subparagraph (B)(i) of paragraph (1), the order issued by the President under paragraph (1) with respect to fiscal year 1986 shall sequester, from each program, project, or activity within an account within major functional category 050, such amounts of new budget authority and unobligated balances as are specified (in accordance with section 251(a)(3)(E)(ii)) in the report submitted by the Comptroller General under section 251(b).

(B) FLEXIBILITY WITH RESPECT TO MILITARY PERSONNEL ACCOUNTS.—

(i) Notwithstanding subparagraph (B)(i) of paragraph (1), the order issued by the President under paragraph (1) with respect to fiscal year 1986 may, with respect to any military personnel account—

(I) exempt any program, project, or activity within such account from the order;

(II) provide for a lower uniform percentage to be applied to reduce any program, project, or activity within such account than would otherwise apply; or

(III) take actions described in both subclauses (I) and (II).

(ii) If the President uses the authority under clause (i), the total amount by which outlays are not reduced for fiscal year 1986 in military personnel accounts by reason of the use of such authority shall be determined. Reductions in outlays under defense programs in such total amount shall be achieved by a uniform percentage sequestration of new budget authority and unobligated balances in each program, project, and activity within each account within major functional category 050 other than those military personnel accounts for which the authority provided under clause (i) has been exercised, computed on the basis of the outlay rate for each such program, project, and activity determined under section 251(d).

(iii) The President may not use the authority provided by clause (i) unless he notifies the Comptroller General and the Congress on or before January 10, 1986, of the manner in which such authority will be exercised.

(C) FLEXIBILITY AMONG PROGRAMS, PROJECTS, AND ACTIVITIES WITHIN ACCOUNTS.—

(i) New budget authority and unobligated balances for any program, project, or activity within an account within major functional category 050 may be reduced under an order issued by the President under paragraph (1) for fiscal year 1986, subject to clauses (ii) and (iii) of this subparagraph, by up to two times the

percentage otherwise applicable to the program, project, or activity (determined after any reduction under subparagraph (B)). To the extent such reductions are made under such an order, the President may provide in the order for an increase in new budget authority and unobligated balances for another program, project, or activity within the same account within major functional category 050 for fiscal year 1986, but such program, project, or activity may not be increased above the level in the base set forth in such order.

(ii) No order issued by the President under paragraph (1) for fiscal year 1986 may result in a base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

(iii) New budget authority and unobligated balances for any program, project, or activity within major functional category 050 for fiscal year 1986 which is 10 percent (or more) greater than the amount requested in the budget submitted by the President under section 1105 of title 31, United States Code, for fiscal year 1986 may not be reduced by more than the percentage applicable to the program, project, or activity (determined after any reduction under subparagraph (B)).

(3) ORDER TO BE BASED ON COMPTROLLER GENERAL'S REPORT.—The order must provide for reductions in the manner specified in section 251(a)(3), must incorporate the provisions of the report submitted under section 251(b), and must be consistent with such report in all respects. The President may not modify or recalculate any of the estimates, determinations, specifications, bases, amounts, or percentages set forth in the report submitted under section 251(b) in determining the reductions to be specified in the order with respect to programs, projects, and activities, or with respect to budget activities, within an account, with the exception of the authority granted to the President for fiscal year 1986 with respect to defense programs pursuant to paragraph (2)(C).

(4) EFFECT OF SEQUESTRATION UNDER INITIAL ORDER.—Notwithstanding section 257(7), amounts sequestered under an order issued by the President under paragraph (1) for fiscal year 1987 or any subsequent fiscal year shall be withheld from obligation pending the issuance of a final order under subsection (b) and shall be permanently cancelled in accordance with such final order upon the issuance of such order.

(5) ACCOMPANYING MESSAGE.—At the time the actions described in the preceding provisions of this subsection with respect to any fiscal year are taken, the President shall transmit to both Houses of the Congress a message containing all the information required by section 251(a)(4) and further specifying in strict accordance with paragraph (3)—

(A) within each account, for each program, project, and activity, or budget account activity, the base from which each sequestration or reduction is taken and the amounts which are to be sequestered or reduced for each such program, project, and activity or budget account activity; and

(B) such other supporting details as the President may determine to be appropriate.

Upon receipt in the Senate and the House of Representatives, the message (and any accompanying proposals made under subsection (c)) shall be referred to all committees with jurisdiction over programs, projects, and activities affected by the order.

(6) EFFECTIVE DATE OF INITIAL ORDER.—

(A) FISCAL YEAR 1986.—The order issued by the President under paragraph (1) with respect to the fiscal year 1986 shall be effective as of March 1, 1986.

(B) FISCAL YEARS 1987-1991.—The order issued by the President under paragraph (1) with respect to the fiscal year 1987 or any subsequent fiscal year shall be effective as of October 1 of such fiscal year (and the President shall withhold from obligation as provided in paragraph (4), pending the issuance of his final order under subsection (b), any amounts that are to be sequestered or reduced under such order).

(C) TREATMENT OF AUTOMATIC SPENDING INCREASES.—

(i) FISCAL YEAR 1986.—Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be first paid during the period beginning with the date of the enactment of this joint resolution and ending with the effective date of an order issued by the President under paragraph (1) for the fiscal year 1986 shall be suspended until such order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such order provides that automatic spending increases shall be reduced to zero during such fiscal year, the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled. If such order provides for the payment of automatic spending increases during such fiscal year in amounts that are less than would have been paid but for such order, or provides for the payment of the full amount of such increases, the increases suspended pursuant to such sentence shall be restored to the extent necessary to pay such reduced or full increases, and lump-sum payments in the amounts necessary to pay such reduced or full increases shall be made, for the period for which such increases were suspended pursuant to this clause.

(ii) FISCAL YEARS 1987-1991.—Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be first paid during the period beginning with the first day of such fiscal year and ending with the date on which a final order is issued pursuant to subsection (b) shall be suspended until such final order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such final order provides that automatic spending increases shall be reduced to zero during such fiscal year, the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled. If such final order provides for the payment of automatic spending increases

during such fiscal year in amounts that are less than would have been paid but for such final order, or provides for the payment of the full amount of such increases, the increases suspended pursuant to such sentence shall be restored to the extent necessary to pay such reduced or full increases, and lump-sum payments in the amounts necessary to pay such reduced or full increases shall be made, for the period for which such increases were suspended pursuant to this clause.

(iii) PROHIBITION AGAINST RECOUPMENT.—Notwithstanding clauses (i) and (ii), if an amount required by either such clause to be withheld is paid, no recoupment shall be made against an individual to whom payment was made.

(iv) EFFECT OF LUMP-SUM PAYMENTS ON NEEDS-RELATED PROGRAMS.—Lump-sum payments made under the last sentence of clause (i) or clause (ii) shall not be considered as income or resources or otherwise taken into account in determining the eligibility of any individual for aid, assistance, or benefits under any Federal or federally-assisted program which conditions such eligibility to any extent upon the income or resources of such individual or his or her family or household, or in determining the amount or duration of such aid, assistance, or benefits.

(D) SPECIAL RULES FOR FISCAL YEAR 1986.—(i) For purposes of applying this section and section 251 with respect to the fiscal year 1986—

(I) the order issued by the President under paragraph (1) of this subsection shall be considered the final order of the President under this section; and

(II) the Committees on Appropriations of the House of Representatives and the Senate may, after consultation with each other, define the term "program, project, and activity", and report to their respective Houses, with respect to matters within their jurisdiction, and the order issued by the President shall sequester funds in accordance with such definition.

(ii) If the Comptroller General declares in the report issued under section 251(b) for fiscal year 1986 that as a result of laws enacted and regulations promulgated after the date of the enactment of this joint resolution and prior to the issuance of such report the excess deficit for the fiscal year (adjusted in accordance with section 251(a)(3)(A)(ii) has been eliminated, the order issued under this subsection for the fiscal year shall so state (and shall make available for obligation and expenditure any amounts withheld pursuant to subparagraph (C)(i) of this paragraph).

(iii) The order issued by the President under paragraph (1) with respect to fiscal year 1986 shall be modified before the effective date for such order prescribed under subparagraph (A) to include in the order the changes in budget authority and unobligated balances, and related changes in outlay reductions, authorized for such fiscal year under section 251(d)(3)(D)(ii).

(b) ISSUANCE OF FINAL ORDER.—

(1) IN GENERAL.—On October 15 of the fiscal year (except in the case of the fiscal year 1986), after the submission of the revised report submitted by the Comptroller General under section 251(c)(2), the President shall issue a final order under this section to eliminate the full amount of the deficit excess as identified by the Comptroller General in the revised report submitted under section 251(c)(2) but only to the extent and in the manner provided in such report. The order issued under this subsection—

(A) shall include the same reductions and sequestrations as the initial order issued under subsection (a), adjusted to the extent necessary to take account of any changes in relevant amounts or percentages determined by the Comptroller General in the revised report submitted under section 251(c)(2),

(B) shall make such reductions and sequestrations in strict accordance with the requirements of section 251(a)(3) and (4), and

(C) shall utilize the same criteria and guidelines as those which were used in the issuance of such initial order under subsection (a).

The provisions of subsection (a)(3) shall apply to the revised report submitted under section 251(c)(2) and to the order issued under this subsection in the same manner as such provisions apply to the initial report issued under section 251(b) and to the order issued under subsection (a).

(2) ORDER REQUIRED IF EXCESS DEFICIT IS ELIMINATED.—If the Comptroller General issues a revised report under section 251(c)(2) stating that as a result of laws enacted and regulations promulgated after the submission of the initial report of the Comptroller General under section 251(b) the excess deficit for a fiscal year (adjusted in accordance with section 251(a)(3)(A)(ii), in the case of fiscal year 1986) has been eliminated, the order issued under this subsection shall so state and shall make available for obligation and expenditure any amounts withheld pursuant to subsection (a)(4) or (a)(6)(C).

(3) EFFECTIVE DATE OF FINAL ORDER.—

(A) Except as provided in subsection (a)(6)(A), the final order issued by the President under paragraph (1) shall become effective on the date of its issuance, and shall supersede the order issued under subsection (a)(1).

(B) Any modification or suspension by such order of the operation of a provision of law that would (but for such order) require an automatic spending increase to take effect during the fiscal year shall apply for the one-year period beginning with the date on which such automatic increase would have taken effect during such fiscal year (but for such order).

(c) PROPOSAL OF ALTERNATIVES BY THE PRESIDENT.—A message transmitted pursuant to subsection (a)(5) with respect to a fiscal year may be accompanied by a proposal setting forth in full detail alternative ways to reduce the deficit for such fiscal year to an amount not greater than the maximum deficit amount for such fiscal year.

(d) EXISTING PROGRAMS, PROJECTS, AND ACTIVITIES NOT TO BE ELIMINATED.—No action taken by the President under subsection (a)

or (b) of this section shall have the effect of eliminating any program, project, or activity of the Federal Government.

(e) RELATIVE BUDGET PRIORITIES NOT TO BE ALTERED.—Nothing in the preceding provisions of this section shall be construed to give the President new authority to alter the relative priorities in the Federal budget that are established by law, and no person who is or becomes eligible for benefits under any provision of law shall be denied eligibility by reason of any order issued under this part.

SEC. 253. COMPLIANCE REPORT BY COMPTROLLER GENERAL.

On or before November 15 of each fiscal year (or on or before April 1, 1986, in the case of the fiscal year 1986), the Comptroller General shall submit to the Congress and the President a report on the extent to which the President's order issued under section 252(b) for such fiscal year complies with all of the requirements contained in section 252, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not.

SEC. 254. CONGRESSIONAL ACTION.

(a) SPECIAL PROCEDURES IN THE EVENT OF A RECESSION.—

(1) IN GENERAL.—The Director of the Congressional Budget Office shall notify the Congress at any time if—

(A) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the four quarters following such notification, such Office or the Office of Management and Budget has determined that real economic growth is projected or estimated to be less than zero with respect to each of any two consecutive quarters within such period, or

(B) the Department of Commerce preliminary reports of actual real economic growth (or any subsequent revision thereof) indicate that the rate of real economic growth for each of the most recent reported quarter and the immediately preceding quarter is less than one percent.

Upon such notification the Majority Leader of each House shall introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in this paragraph are met and suspending the relevant provisions of this title for the remainder of the current fiscal year or for the following fiscal year or both.

(2) FORM OF JOINT RESOLUTION.—

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: "That the Congress declares that the conditions specified in section 254(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met; and—

"(1) the provisions of sections 3(7), 301(i), 302(f), 304(b), and 311(a) of the Congressional Budget and Impoundment Control Act of 1974, section 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the remainder of the current fiscal year, and

"(2) the provisions of sections 3(7), 301(i), 304(b), and 311(a) (insofar as it relates to section 3(7)) of the Congressional Budget and Impoundment Control Act of

1974, sections 302(f) and 311(a) (except insofar as it relates to section 3(7)) of that Act (but only if a concurrent resolution on the budget under section 301 of that Act, for the fiscal year following the current fiscal year, has been agreed to prior to the introduction of this joint resolution), sections 1105(f) and 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the fiscal year following the current fiscal year.

This joint resolution shall not have the effect of suspending any final order which was issued for the current fiscal year under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 if such order was issued before the date of the enactment of this joint resolution.".

(B) The title of the joint resolution shall be "Joint resolution suspending certain provisions of law pursuant to section 254(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985."; and the joint resolution shall not contain any preamble.

(3) COMMITTEE ACTION.—Each joint resolution introduced pursuant to paragraph (1) shall be referred to the Committee on the Budget of the House involved; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

(4) CONSIDERATION OF JOINT RESOLUTION.—

(A) A vote on final passage of a joint resolution reported to a House of the Congress or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session of such House after the date on which the joint resolution is reported to such House or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then—

(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

(B)(i) A motion in the House of Representatives to proceed to the consideration of a joint resolution under this paragraph shall be highly privileged and not debatable. An

amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the House of Representatives on a joint resolution under this paragraph shall be limited to not more than five hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to postpone, made in the House of Representatives with respect to the consideration of a joint resolution under this paragraph, and a motion to proceed to the consideration of other business, shall not be in order. A motion further to limit debate shall not be debatable. It shall not be in order to move to table or to recommit a joint resolution under this paragraph or to move to reconsider the vote by which the joint resolution is agreed to or disagreed to.

(iii) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a joint resolution under this paragraph shall be decided without debate.

(iv) Except to the extent specifically provided in the preceding provisions of this subsection or in subparagraph (D), consideration of a joint resolution under this subparagraph shall be governed by the Rules of the House of Representatives.

(C)(i) A motion in the Senate to proceed to the consideration of a joint resolution under this paragraph shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

(D) No amendment to a joint resolution considered under this paragraph shall be in order in either the House of Representatives or the Senate.

(b) CONGRESSIONAL RESPONSE TO PRESIDENTIAL ORDER.—

(1) REPORTING OF RESOLUTIONS, AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE.—

(A) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER.—Within two days after the submission of a report by the

Comptroller General under section 251(c)(2), each standing committee of the Senate may submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

(B) INITIAL BUDGET COMMITTEE ACTION.—Not later than two days after issuance of a final order by the President under section 252(b) with respect to a fiscal year, the Committee on the Budget of the Senate may report to the Senate a resolution. The resolution may affirm the impact of the order issued under such section, in whole or in part. To the extent that any part of the order is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of deficit reduction contained in those sections which are not affirmed.

(C) RESPONSE OF COMMITTEES.—Committees instructed pursuant to subparagraph (B), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in subparagraph (B) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under subparagraph (B) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit at least equal to the total reduction directed by such instructions.

(D) BUDGET COMMITTEE ACTION.—Upon receipt of the recommendations received in response to a resolution referred to in subparagraph (B), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in subparagraph (B) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit reduction directed in such instructions.

(E) POINT OF ORDER.—It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under subparagraph (D) with respect to a fiscal year, any amendment thereto, or any conference report thereon if—

(i) the enactment of such bill or resolution as reported;

(ii) the adoption and enactment of such amendment; or

(iii) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit for such fiscal year to exceed the maximum deficit amount for such fiscal year, unless the report submitted under section 251(c)(1) projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

(F) TREATMENT OF CERTAIN AMENDMENTS.—In the Senate, an amendment which adds to a resolution reported under subparagraph (B) an instruction of the type referred to in such subparagraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be nongermane on the basis that the instruction constitutes new matter.

(G) DEFINITION.—For purposes of subparagraphs (A), (B), and (C), the term "day" shall mean any calendar day on which the Senate is in session.

(2) PROCEDURES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

(B) LIMIT ON DEBATE.—Debate in the Senate on any resolution reported pursuant to paragraph (1)(B), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

(C) LIMITATION ON AMENDMENTS.—Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

(D) BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE.—Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

(E) DEFINITION.—For purposes of this subsection, the term "resolution" means a simple, joint, or concurrent resolution.

(c) CERTAIN RESOLUTIONS TREATED AS RECONCILIATION BILLS.—Resolutions described in subsection (b) of this section and bills reported as a result thereof shall be considered in the Senate to be reconciliation bills or resolutions for purposes of the Congressional Budget Act of 1974.

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES.

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of

the Social Security Act, or in benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this part.

(b) VETERANS PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

Veterans' compensation (36–0153–0–1–701); and

Veterans' pensions (36–0154–0–1–701).

(c) NET INTEREST.—No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this part.

(d) EARNED INCOME TAX CREDIT.—Payments to individuals made pursuant to section 32 of the Internal Revenue Code of 1954 shall be exempt from reduction under any order issued under this part.

(e) OFFSETTING RECEIPTS AND COLLECTIONS.—Offsetting receipts and collections shall not be reduced under any order issued under this part.

(f) CERTAIN PROGRAM BASES.—Outlays for programs specified in paragraph (1) of section 257 shall be subject to reduction only in accordance with the procedures established in section 251(a)(3)(C) and 256(b).

(g) OTHER PROGRAMS AND ACTIVITIES.—

(1) The following budget accounts and activities shall be exempt from reduction under any order issued under this part:

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Alaska Power Administration, Operations and maintenance (89–0304–0–1–271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93–454 (1974), as amended (89–4045–0–3–271);

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14–9973–0–7–999);

Claims, defense (97–0102–0–1–051);

Claims, judgments, and relief acts (20–1895–0–1–806);

Coinage profit fund (20–5811–0–2–803);

Compensation of the President (11–0001–0–1–802);

Eastern Indian land claims settlement fund (14–2202–0–1–806);

Exchange stabilization fund (20–4444–0–3–155);

Federal payment to the railroad retirement account (60–0113–0–1–601);

Foreign military sales trust fund (11–8242–0–7–155);

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75–4305–0–3–553);

Intragovernmental funds, including those from which the outlays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15–0104–0–1–153);

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payments to copyright owners (03-5175-0-2-376);

Payments to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (97-0040-0-1-054);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Postal service fund (18-4020-0-3-372);

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Western Area Power Administration, Construction, rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271).

(2) Prior legal obligations of the Government in the following budget accounts and activities shall be exempt from any order issued under this part:

Agency for International Development, Housing, and other credit guarantee programs (72-4340-0-3-151);

Agricultural credit insurance fund (12-4140-0-3-351);

Biomass energy development (20-0114-0-1-271);

Check forgery insurance fund (20-4109-0-3-803);

Community development grant loan guarantees (86-0162-0-1-451);

Credit union share insurance fund (25-4468-0-3-371);

Economic development revolving fund (13-4406-0-3-452);

Employees life insurance fund (24-8424-0-8-602);

Energy security reserve (Synthetic Fuels Corporation) (20-0112-0-1-271);

Export-Import Bank of the United States, Limitation of program activity (83-4027-0-3-155);

Federal Aviation Administration, Aviation insurance revolving fund (69-4120-0-3-402);

Federal Crop Insurance Corporation fund (12-4085-0-3-351);

Federal Deposit Insurance Corporation (51-8419-0-8-371);

Federal Emergency Management Agency, National flood insurance fund (58-4236-0-3-453);

Federal Emergency Management Agency, National insurance development fund (58-4235-0-3-451);

Federal Housing Administration fund (86-4070-0-3-371);

Federal Savings and Loan Insurance Corporation fund (82-4037-0-3-371);

Federal ship financing fund (69-4301-0-3-403);

Federal ship financing fund, fishing vessels (13-4417-0-3-376);

Geothermal resources development fund (89-0206-0-1-271);

Government National Mortgage Association, Guarantees of mortgage-backed securities (86-4238-0-3-371);

Health education loans (75-4307-0-3-553);

Homeowners assistance fund, Defense (97-4090-0-3-051);

Indian loan guarantee and insurance fund (14-4410-0-3-452);

International Trade Administration, Operations and administration (13-1250-0-1-376);

Low-rent public housing, Loans and other expenses (86-4098-0-3-604);

Maritime Administration, War-risk insurance revolving fund (69-4302-0-3-403);

Overseas Private Investment Corporation (71-4030-0-3-151);

Pension Benefit Guaranty Corporation fund (16-4204-0-3-601);

Rail service assistance (69-0122-0-1-401);

Railroad rehabilitation and improvement financing fund (69-4411-0-3-401);

Rural development insurance fund (12-4155-0-3-452);

Rural electric and telephone revolving fund (12-4230-8-3-271);

Rural housing insurance fund (12-4141-0-3-371);

Small Business Administration, Business loan and investment fund (73-4154-0-3-376);

Small Business Administration, Lease guarantees revolving fund (73-4157-0-3-376);

Small Business Administration, Pollution control equipment contract guarantee revolving fund (73-4147-0-3-376);

Small Business Administration, Surety bond guarantees revolving fund (73-4156-0-3-376);

Veterans Administration, Loan guaranty revolving fund (36-4025-0-3-704);

Veterans Administration, National service life insurance fund (36-8132-0-7-701);

Veterans Administration, Service-disabled veterans insurance fund (36-4012-0-3-701);

Veterans Administration, Servicemen's group life insurance fund (36-4009-0-3-701);

Veterans Administration, United States Government life insurance fund (36-8150-0-7-701);

Veterans Administration, Veterans insurance and indemnities (36-0120-0-1-701);

Veterans Administration, Veterans reopened insurance fund (36-4010-0-3-701); and

Veterans Administration, Veterans special life insurance fund (36-8455-0-8-701).

(h) LOW-INCOME PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children (75-0412-0-1-609);

Child nutrition (12-3539-0-1-605);

Food stamp programs (12-3505-0-1-605 and 12-3550-0-1-605);

Grants to States for Medicaid (75-0512-0-1-551);

Supplemental Security Income Program (75-0406-0-1-609); and

Women, infants, and children program (12-3510-0-1-605).

(i) IDENTIFICATION OF PROGRAMS.—For purposes of subsections (g) and (h), programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government, 1986—Appendix.

SEC. 254. EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.

(a) EFFECT OF REDUCTIONS AND SEQUESTRATIONS.—

(1) REDUCTIONS IN AUTOMATIC SPENDING INCREASES.—Notwithstanding any other provision of law, any change in the Consumer Price Index or any other index measuring costs, prices, or wages (or in any component of any such index), under a program listed in section 257(1), that is not taken into account for purposes of determining the amount of an automatic spending increase (if any) under such program for a fiscal year for which an order is issued under section 252 shall not be taken into account for purposes of determining any automatic spending increase during any fiscal year thereafter.

(2) SEQUESTRATIONS.—Any amount of new budget authority, unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974), or obligation limitations which is sequestered or reduced pursuant to an order issued under section 252 is permanently cancelled, with the exception of amounts sequestered in special or trust funds, which shall remain in such funds and be available in accordance with and to the extent permitted by law, including the provisions of this Act.

(b) TREATMENT OF FEDERAL ADMINISTRATIVE EXPENSES.—

(1) Notwithstanding any other provision of this title, administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or account shall be subject to reduction pursuant to an order issued under section 252, without regard to any exemption, exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity, or account under this part.

(2) Notwithstanding any other provision of law, administrative expenses of any program, project, activity, or account which is self-supporting and does not receive appropriations shall be subject to reduction under a sequester order, unless specifically exempted in this joint resolution.

(3) Payments made by the Federal Government to reimburse or match administrative costs incurred by a State or political subdivision under or in connection with any program, project, activity, or account shall not be considered administrative expenses of the Federal Government for purposes of this section, and shall be subject to reduction or sequestration under this part to the extent (and only to the extent) that other payments made by the Federal Government under or in connection with that program, project, activity, or account are subject to such

reduction or sequestration; except that Federal payments made to a State as reimbursement of administrative costs incurred by such State under or in connection with the unemployment compensation programs specified in subsection (h)(1) shall be subject to reduction or sequestration under this part notwithstanding the exemption otherwise granted to such programs under that subsection.

(c) EFFECT OF ORDERS ON THE GUARANTEED STUDENT LOAN PROGRAM.—(1) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965, as a consequence of an order issued pursuant to section 252, shall be achieved only from loans described in paragraphs (2) and (3) by the application of the measures described in such paragraphs.

(2) For any loan made during the period beginning on the date that an order issued under section 252 takes effect with respect to a fiscal year and ending at the close of such fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of—

(A) 0.40 percent, or

(B) the percentage by which the rate specified in such section exceeds 3 percent.

(3) For any loan made during the period beginning on the date that an order issued under section 252 takes effect with respect to a fiscal year and ending at the close of such fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act shall be increased by 0.50 percent.

(d) SPECIAL RULES FOR MEDICARE PROGRAM.—

(1) MAXIMUM PERCENTAGE REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—The maximum permissible reduction for the health insurance programs under title XVIII of the Social Security Act for any fiscal year, pursuant to an order issued under section 252, consists only of a reduction of—

(A) 1 percent in the case of fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year, in each separate payment amount otherwise made for a covered service under those programs without regard to this part.

(2) TIMING OF APPLICATION OF REDUCTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(B) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at

any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

(C) EFFECTIVE PERIOD OF ORDER FOR FISCAL YEAR 1986.—For purposes of this paragraph, the effective period of a sequestration order for fiscal year 1986 is the period beginning on March 1, 1986, and ending on September 30, 1986.

(3) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1), of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(4) NO EFFECT ON COMPUTATION OF AAPCC.—In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

(e) TREATMENT OF CHILD SUPPORT ENFORCEMENT PROGRAM.—Any order issued by the President under section 252 shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(f) TREATMENT OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.—Any order issued by the President under section 252 shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State may, after the date of the enactment of this joint resolution, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(g) FEDERAL PAY.—

(1) IN GENERAL.—For purposes of any order issued under section 252—

(A) Federal pay under a statutory pay system, and

(B) elements of military pay,

shall be subject to reduction under an order in the same manner as other administrative expense components of the Federal budget; except that no such order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any such statutory pay system or the rate of any element of military pay to which any individual is entitled under title 37, United States Code, or any increase in rates of pay which is scheduled to take effect under section 5305 of title 5, United States Code, section 1009 of title 37, United States Code, or any other provision of law.

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term "statutory pay system" shall have the meaning given that term in section 5301(c) of title 5, United States Code.

(B) The term "elements of military pay" means—

(i) the elements of compensation of members of the uniformed services specified in section 1009 of title 37, United States Code,

(ii) allowances provided members of the uniformed services under sections 403a and 405 of such title, and

(iii) cadet pay and midshipman pay under section 203(c) of such title.

(C) The term "uniformed services" shall have the meaning given that term in section 101(3) of title 37, United States Code.

(h) TREATMENT OF PAYMENTS AND ADVANCES MADE WITH RESPECT TO UNEMPLOYMENT COMPENSATION PROGRAMS.—(1) For purposes of section 252—

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act),

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal unemployment account pursuant to section 1203 of such Act, and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 252 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

(i) TREATMENT OF MINE WORKER DISABILITY COMPENSATION INCREASES AS AUTOMATIC SPENDING INCREASES.—An order issued by the President under section 252 may not result in eliminating or reducing an increase in disability benefits under the Federal Mine Safety and Health Act except in the manner provided for automatic

spending increases under section 252(a)(1)(A), and no such increase may, pursuant to such section, be reduced below zero.

(j) COMMODITY CREDIT CORPORATION.—

(1) POWERS AND AUTHORITIES OF THE COMMODITY CREDIT CORPORATION.—This title shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a corporation, the purpose for which it was created.

(2) REDUCTION IN PAYMENTS MADE UNDER CONTRACTS.—(A) Payments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time an order has been issued under section 252 shall not be reduced by an order subsequently issued. Subject to subparagraph (B), after an order is issued under such section for a fiscal year, any cash payments made by the Commodity Credit Corporation—

(i) under the terms of any one-year contract entered into in such fiscal year and after the issuance of the order; and

(ii) out of an entitlement account,

to any person (including any producer, lender, or guarantee entity) shall be subject to reduction under the order.

(B) Each contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under subparagraph (A) shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity have been entered into prior to the issuance of an order under section 252, the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for the next succeeding crop of the commodity, under the authority provided in paragraph (3).

(3) DELAYED REDUCTION IN OUTLAYS PERMISSIBLE.—Notwithstanding any other provision of this joint resolution, if an order under section 252 is issued with respect to a fiscal year, any reduction under the order applicable to contracts described in paragraph (1) may provide for reductions in outlays for the account involved to occur in the fiscal year following the fiscal year to which the order applies. No other account, or other program, project, or activity, shall bear an increased reduction for the fiscal year to which the order applies as a result of the operation of the preceding sentence.

(4) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS.—All reductions described in paragraph (2) which are required to be made in connection with an order issued under section 252 with respect to a fiscal year—

(A) shall be made so as to ensure that outlays for each program, project, activity, or account involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order; and

(B) with respect to commodity price support and income protection programs, shall be made in such manner and under such procedures as will attempt to ensure that—

(i) uncertainty as to the scope of benefits under any such program is minimized;

(ii) any instability in market prices for agricultural commodities resulting from the reduction is minimized; and

(iii) normal production and marketing relationships among agricultural commodities (including both contract and non-contract commodities) are not distorted.

In meeting the criterion set out in clause (iii) of subparagraph (B) of the preceding sentence, the President shall take into consideration that reductions under an order may apply to programs for two or more agricultural commodities that use the same type of production or marketing resources or that are alternative commodities among which a producer could choose in making annual production decisions.

(5) NO DOUBLE REDUCTION.—No agricultural price support or income protection program that is subject to reduction under an order issued under section 252 for a fiscal year may be subject, as well, to modification or suspension under such order as an automatic spending increase.

(6) CERTAIN AUTHORITY NOT TO BE LIMITED.—Nothing in this joint resolution shall limit or reduce, in any way, any appropriation that provides the Commodity Credit Corporation with budget authority to cover the Corporation's net realized losses.

(k) COMMUNITY AND MIGRANT HEALTH CENTERS, INDIAN HEALTH SERVICES AND FACILITIES, AND VETERANS' MEDICAL CARE.—

(1) The maximum permissible reduction in budget authority for any account listed in paragraph (2) for any fiscal year, pursuant to an order issued under section 252, shall be—

(A) 1 percent in the case of the fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year.

(2) The accounts referred to in paragraph (1) are as follows:

(A) Community health centers (75–0350–0–1–550).

(B) Migrant health centers (75–0350–0–1–550).

(C) Indian health facilities (75–0391–0–1–551).

(D) Indian health services (75–0390–0–1–551).

(E) Veterans' medical care (36–0160–0–1–703).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government—Appendix.

(l) TREATMENT OF OBLIGATED BALANCES.—

(1) IN GENERAL.—Except as provided in paragraph (2), obligated balances shall not be subject to reduction under an order issued under section 252.

(2) EXCEPTION.—Existing contracts in major functional category 050 (other than (A) those contracts which include a specified penalty for cancellation or modification by the Government and which if so cancelled or modified would result (due to such penalty) in a net loss to the Government for the fiscal year, and (B) those contracts the reduction of which would violate the legal obligations of the Government) shall be subject to reduction, in accordance with section 251(d)(3), under an order issued under section 252.

(3) DEFINITION.—For purposes of this subsection, the term "existing contracts" shall include all military and civilian con-

tracts in major functional category 050 which exist at the time the order involved is issued under section 252.

SEC. 257. DEFINITIONS.

For purposes of this title:

(1) The term "automatic spending increase" (except as otherwise provided in sections 255 and 256) means—

(A) increases in budget outlays due to changes in indexes in the following Federal programs:

Black lung benefits (20–8144–0–7–601);

Central Intelligence Agency retirement and disability system fund (56–3400–0–1–054);

Civil service retirement and disability fund (24–8135–0–7–602);

Comptrollers general retirement system (05–0107–0–1–801);

Foreign service retirement and disability fund (19–8186–0–7–602);

Judicial survivors' annuities fund (10–8110–0–7–602);

Longshoremen's and harborworkers' compensation benefits (16–9971–0–7–601);

Military retirement fund (97–8097–0–7–602);

National Oceanic and Atmospheric Administration retirement (13–1450–0–1–306);

Pensions for former Presidents (47–0105–0–1–802);

Railroad retirement tier II (60–8011–0–7–601);

Retired pay, Coast Guard (69–0241–0–1–403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75–0379–0–1–551);

Special benefits, Federal Employees' Compensation Act (16–1521–0–1–600);

Special benefits for disabled coal miners (75–0409–0–1–601); and

Tax Court judges survivors annuity fund (23–8115–0–7–602); and

(B) increases in budget outlays due to changes in indexes in the following Federal programs:

National Wool Act (12–4336–0–3–351);

Special milk program (12–3502–0–1–605); and

Vocational rehabilitation (91–0301–0–1–506).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government, 1986—Appendix.

(2) The terms "budget outlays" and "budget authority" have the meaning given to such terms in sections 3(1) and 3(2), respectively, of the Congressional Budget and Impoundment Control Act of 1974.

(3) The term "concurrent resolution on the budget" has the meaning given to such term in section 3(4) of the Congressional Budget and Impoundment Control Act of 1974.

(4) The term "deficit" has the meaning given to such term in section 3(6) of the Congressional Budget and Impoundment Control Act of 1974.

(5) The term "maximum deficit amount", with respect to any fiscal year, means the maximum deficit amount for such fiscal

year determined under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974.

(6) The term "real economic growth", with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

(7) The terms "sequester" and "sequestration" (subject to section 252(a)(4)) refer to or mean the cancellation of new budget authority, unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, and the reduction of obligation limitations.

(8) The term "account" means an item for which appropriations are made in any appropriation Act used to determine the budget base, and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the Appendix to the President's budget.

PART D—BUDGETARY TREATMENT OF SOCIAL SECURITY TRUST FUNDS

SEC. 261. TREATMENT OF TRUST FUNDS.

(a) FISCAL YEARS 1986 THROUGH 1992.—

(1) IN GENERAL.—Section 710 of the Social Security Act (as added by paragraph (1) of subsection (a) of section 346 of the Social Security Amendments of 1983) is amended—

(A) by striking out all beginning with "the" the first place it appears down through "Disability Insurance Trust Fund, the" and inserting in lieu thereof "the";

(B) by striking out the comma after "Hospital Insurance Trust Fund";

(C) by striking out "sections 1401, 3101, and 3111" and inserting in lieu thereof "sections 1401(b), 3101(b), and 3111(b)";

(D) by redesignating all after the section designation as subsection (b);

(E) by inserting immediately after the section designation the following:

"(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government."; and

(F) by adding at the end thereof the following new subsection:

"(c) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency

Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, or for payments from either such Trust Fund to the general fund of the Treasury.".

(2) APPLICATION.—The amendments made by paragraph (1) shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.

(b) FISCAL YEAR 1993 AND THEREAFTER.—Section 710(a) of the Social Security Act (42 U.S.C. 911 note), as amended by section 346(b) of the Social Security Amendments of 1983 (to be effective with respect to fiscal years beginning after September 30, 1992) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.".

PART E—MISCELLANEOUS AND RELATED PROVISIONS

SEC. 271. WAIVERS AND SUSPENSIONS; RULEMAKING POWERS.

(a) BUDGET ACT WAIVERS IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

"(c) Sections 305(b)(2) and 306 of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.".

(b) OTHER WAIVERS AND SUSPENSIONS IN THE SENATE.—Sections 301(i), 302(f), 304(b), 310(d), 310(g), and 311(a) of the Congressional Budget Act of 1974 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. This subsection shall not apply to any joint resolution reported or discharged pursuant to section 254(a) of this joint resolution.

(c) RULEMAKING POWERS.—The provisions of this title, other than those relating to the activities of the executive and judicial branches of the Government, are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

SEC. 272. RESTORATION OF TRUST FUND INVESTMENTS.

(a) RESTORATION OF SOCIAL SECURITY TRUST FUNDS AND CERTAIN OTHER FUNDS.—

(1) REISSUANCE OF OBLIGATIONS.—The Secretary of the Treasury shall immediately reissue to each fund listed in paragraph (3) obligations under chapter 31 of title 31, United States Code, which are identical, with respect to interest rate and maturity, to public debt obligations held by such fund which—

(A) were redeemed during the period beginning with September 1, 1985, and ending with September 29, 1985, and

(B) as determined by such Secretary on the basis of standard investment procedures for such fund in effect on September 1, 1985, would not have been redeemed if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

Such obligations shall be substituted for obligations which are held by such fund on the date of the enactment of this joint resolution in a manner which will ensure that, after such substitution, the holdings of such fund will replicate to the maximum extent practicable the holdings which would have been held by such fund on such date if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

(2) APPROPRIATION TO FUNDS OF INTEREST LOST ON OR AFTER SEPTEMBER 1, 1985.—The Secretary of the Treasury shall pay on the normal interest payment date to each fund listed in paragraph (3), from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary to be equal to the excess of—

(A) the net amount of interest which would have been earned by such fund, during the period beginning with September 1, 1985, and ending with the date of the enactment of this joint resolution, if all noninvestments, redemptions, and disinvestments with respect to such fund which—

(i) occurred during such period, and

(ii) would not have occurred if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985,

had not occurred, over

(B) the net amount of interest actually earned by such fund during such period.

(3) FUNDS AFFECTED.—The funds referred to in paragraphs (1) and (2) are the following:

(A) the Federal Old-Age and Survivors Insurance Trust Fund,

(B) the Federal Disability Insurance Trust Fund,

(C) the Federal Hospital Insurance Trust Fund,

(D) the Federal Supplementary Medical Insurance Trust Fund,

(E) the Railroad Retirement Account,

(F) the Civil Service Retirement and Disability Fund, and

(G) all other funds (other than the funds referred to in subsection (b) or (c)) listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985.

(b) RESTORATION OF DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND.—

(1) ISSUANCE OF OBLIGATIONS.—The Secretary of the Treasury shall immediately issue to the Department of Defense Military Retirement Fund obligations under chapter 31 of title 31, United States Code, which such Secretary, in consultation with the Secretary of Defense, determines would have been issued to such fund on October 1, 1985, if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985. Such obligations shall be market-based special obligations issued at prices, including accrued interest, prevailing for such obligations on October 1, 1985. Such obligations shall be substituted for all obligations which were purchased by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, with amounts which were transferred to such fund on October 1, 1985.

(2) APPROPRIATION TO FUND OF INTEREST LOST ON OR AFTER OCTOBER 1, 1985.—

(A) IN GENERAL.—The Secretary of the Treasury shall immediately pay to the Department of Defense Military Retirement Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary, in consultation with the Secretary of Defense, to be equal to the excess of—

(i) the interest which would have been earned by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, if the obligations issued pursuant to paragraph (1) had been issued on October 1, 1985, over

(ii) the amount of interest actually collected by such fund during such period on obligations purchased by such fund with amounts which were transferred to such fund on October 1, 1985.

(B) INVESTMENT OF INTEREST RECEIPTS.—The Secretary of the Treasury shall immediately invest the amount paid to the Department of Defense Military Retirement Fund pursuant to subparagraph (A) in obligations designated by the Secretary of Defense. Such obligations shall be market-based special obligations issued with an issue date of November 15, 1985, and at prices, including accrued interest, prevailing for such obligations on November 15, 1985.

(c) APPROPRIATION TO CERTAIN FUNDS WITH RESPECT TO UNINVESTED BALANCES AFTER DECEMBER 6, 1985.—

(1) IN GENERAL.—The Secretary of the Treasury shall immediately pay, from amounts in the general fund not otherwise appropriated, to each fund which is listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985, and which invests in market-based special obligations under chapter 31 of title 31, United States Code, an amount equal to the interest which would have been earned by such fund during the period begin-

ning with December 7, 1985, and ending with the date of the enactment of this joint resolution, if the daily balance in such fund which the Secretary of the Treasury was requested to invest during such period but was unable to invest, because of the expiration of the temporary debt limit, had been invested each day during such period, overnight, in obligations under such chapter 31 earning interest at a rate determined by the Secretary of the Treasury in accordance with the standard practice of the Department of the Treasury.

(2) EXPIRATION OF TEMPORARY DEBT LIMIT DEFINED.—For purposes of paragraph (1), the term "expiration of the temporary debt limit" means the expiration of the period described in section 1 of the Act entitled "An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust funds", approved November 14, 1985 (Public Law 99-155).

(d) ADDITIONAL APPROPRIATION TO OASDI TRUST FUNDS OF INTEREST LOST FROM ACTIONS TAKEN IN SEPTEMBER AND OCTOBER 1984.—

(1) IN GENERAL.—On December 31, 1985, the Secretary of the Treasury shall pay to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, amounts determined under this subsection.

(2) AMOUNT PAID TO EACH TRUST FUND.—The amount paid to each such Trust Fund pursuant to paragraph (1) shall be an amount determined jointly by the Secretary of the Treasury and the Secretary of Health and Human Services to be sufficient to fully compensate such Trust Fund for interest losses arising from the premature redemption, during the period beginning with September 1, 1984, and ending with October 31, 1984, of securities maturing during the period beginning with calendar year 1987 and ending with calendar year 1991.

(3) LIMITATION.—The total amount paid from the general fund of the Treasury pursuant to paragraph (1) shall not exceed $550,000,000.

(4) ADJUSTMENTS.—

(A) DETERMINATION OF SHORTFALLS AND EXCESSES IN PAYMENTS TO TRUST FUNDS.—As soon as practicable after May 31, 1986, the Secretary of the Treasury and the Secretary of Health and Human Services shall jointly determine any shortfall or excess in the amount paid to each Trust Fund pursuant to paragraph (1) caused by—

(i) the difference between actual interest rates and interest rates assumed for purposes of paragraph (1), and

(ii) the difference between the actual amount of securities redeemed in January 1986 for purposes of compliance with section 201(l)(3)(B) of the Social Security Act and the amount of securities assumed for purposes of paragraph (1) to be redeemed in such month for purposes of compliance with such section.

(B) PAYMENT OF SHORTFALLS AND EXCESSES.—On June 30, 1986, the Secretary of the Treasury shall—

(i) in the case of a shortfall in the amount paid to either Trust Fund determined pursuant to subpara-

graph (A), pay to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, the amount of such shortfall, or

(ii) in the case of an excess in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to the general fund of the Treasury, from such Trust Fund, the amount of such excess (but not to exceed the amount paid to such Trust Fund pursuant to paragraph (1)).

SEC. 273. REVENUE ESTIMATES.

For the purposes of revenue legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of the purposes of this title and the Congressional Budget and Impoundment Control Act of 1974.

SEC. 274. JUDICIAL REVIEW.

(a) EXPEDITED REVIEW.—

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any order that might be issued pursuant to section 252 violates the Constitution.

(2) Any Member of Congress, or any other person adversely affected by any action taken under this title, may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief concerning the constitutionality of this title.

(3) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory and injunctive relief on the ground that the terms of an order issued under section 252 do not comply with the requirements of this title.

(4) A copy of any complaint in an action brought under paragraph (1), (2), or (3) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(5) Any action brought under paragraph (1), (2), or (3) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1), (2), or (3) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought

under paragraph (1), (2), or (3) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1), (2), or (3) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) NONCOMPLIANCE WITH SEQUESTRATION PROCEDURES.—

(1) If it is finally determined by a court of competent jurisdiction that an order issued by the President under section 252(b) for any fiscal year—

(A) does not reduce automatic spending increases under any program specified in section 257(1) to the extent that such increases are required to be reduced by part C of this title (or reduces such increases by a greater extent than is so required),

(B) does not sequester the amount of new budget authority, new loan guarantee commitments, new direct loan obligations, or spending authority which is required to be sequestered by such part (or sequesters more than that amount) with respect to any program, project, activity, or account, or

(C) does not reduce obligation limitations by the amount by which such limitations are required to be reduced under such part (or reduces such limitations by more than that amount) with respect to any program, project, activity, or account,

the President shall, within 20 days after such determination is made, revise the order in accordance with such determination.

(2) If the order issued by the President under section 252(b) for any fiscal year—

(A) does not reduce any automatic spending increase to the extent that such increase is required to be reduced by part C of this title,

(B) does not sequester any amount of new budget authority, new loan guarantee commitments, new direct loan obligations, or spending authority which is required to be sequestered by such part, or

(C) does not reduce any obligation limitation by the amount by which such limitation is required to be reduced under such part,

on the claim or defense that the constitutional powers of the President prevent such sequestration or reduction or permit the avoidance of such sequestration or reduction, and such claim or defense is finally determined by the Supreme Court of the United States to be valid, then the entire order issued pursuant to section 252(b) for such fiscal year shall be null and void.

(e) TIMING OF RELIEF.—No order of any court granting declaratory or injunctive relief from the order of the President issued under section 252, including but not limited to relief permitting or requiring the expenditure of funds sequestered by such order, shall take

effect during the pendency of the action before such court, during the time appeal may be taken, or, if appeal is taken, during the period before the court to which such appeal is taken has entered its final order disposing of such action.

(f) ALTERNATIVE PROCEDURES FOR THE JOINT REPORTS OF THE DIRECTORS.—

(1) In the event that any of the reporting procedures described in section 251 are invalidated, then any report of the Directors referred to in section 251(a) or (c)(1) shall be transmitted to the joint committee established under this subsection.

(2) Upon the invalidation of any such procedure there is established a Temporary Joint Committee on Deficit Reduction, composed of the entire membership of the Budget Committees of the House of Representatives and the Senate. The Chairman of these two committees shall act as Co-Chairmen of the Joint Committee. Actions taken by the Joint Committee shall be determined by the majority vote of the members representing each House. The purposes of the Joint Committee are to receive the reports of the Directors as described in paragraph (1), and to report (with respect to each such report of the Directors) a joint resolution as described in paragraph (3).

(3) No later than 5 days after the receipt of a report of the Directors in accordance with paragraph (1), the Joint Committee shall report to the House of Representatives and the Senate a joint resolution setting forth the contents of the report of the Directors.

(4) The provisions relating to the consideration of a joint resolution under section 254(a)(4) shall apply to the consideration of a joint resolution reported pursuant to this subsection in the House of Representatives and the Senate, except that debate in each House shall be limited to two hours.

(5) Upon its enactment, the joint resolution shall be deemed to be the report received by the President under section 251(b) or (c)(2) (whichever is applicable).

(g) PRESERVATION OF OTHER RIGHTS.—The rights created by this section are in addition to the rights of any person under law, subject to subsection (e).

(h) ECONOMIC DATA, ASSUMPTIONS, AND METHODOLOGIES.—The economic data, assumptions, and methodologies used by the Comptroller General in computing the base levels of total revenues and total budget outlays, as specified in any report issued by the Comptroller General under section 251(b) or (c)(2), shall not be subject to review in any judicial or administrative proceeding.

SEC. 275. EFFECTIVE DATES.

(a) IN GENERAL.—

(1) Except as provided in paragraph (2) and in subsections (b) and (c), this title and the amendments made by this title shall become effective on the date of the enactment of this title and shall apply with respect to fiscal years beginning after September 30, 1985.

(2)(A) The amendment made by section 201(a)(2), and the amendment made by section 201(b) insofar as it relates to subsections (c), (f), and (g) of section 302 of the Congressional Budget Act of 1974 and to subsections (c), (d), and (g) of section 310 of that Act), shall become effective April 15, 1986.

(B) The amendment made by section 212 shall become effective February 1, 1986.

(b) EXPIRATION.—

(1) Part C of this title, and the other provisions contained in or added by this title which are listed in paragraph (2), shall expire September 30, 1991.

(2) The other provisions referred to in paragraph (1) are as follows:

(A) section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 and the second sentence of section 3(6) of such Act (as added by section 201(a)(1) of this joint resolution);

(B) sections 301(i) and 304(b) of the Congressional Budget Act of 1974 and the portion of section 311(a) of such Act which begins with "or, in the Senate" and ends with "paragraph (2) of such subsection)" (as added by section 201(b) of this joint resolution);

(C) sections 1105(f) and 1106(c) of title 31, United States Code (as added by sections 241(b) and 242(b) of this joint resolution); and

(D) section 271(b) of this joint resolution.

(c) OASDI TRUST FUNDS.—The amendments made by part D shall apply as provided in such part.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

have been rendered homeless or are in needy circumstances as the result of the recent flood due to the overflow of the Arkansas River and its tributaries, and in executing this joint resolution, the Secretary of War is directed so far as possible to cooperate with the authorities of the State of Colorado, and the mayors of such cities on the Arkansas River or its tributaries as may have sustained damages.

Approved, June 8, 1921.

June 10, 1921.
[S. 1004.]
[Public, No. 13.]

CHAP. 18.—An Act To provide a national budget system and an independent audit of Government accounts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Budget and Accounting Act, 1921.

TITLE I.—DEFINITIONS.

Title of Act.

SECTION 1. This Act may be cited as the "Budget and Accounting Act, 1921."

Meaning of terms.

SEC. 2. When used in this Act—

"Department and establishment."

The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the Legislative Branch of the Government or the Supreme Court of the United States;

Congress and Supreme Court, not included.

"The Budget."

The term "the Budget" means the Budget required by section 201 to be transmitted to Congress;

"Bureau."

The term "Bureau" means the Bureau of the Budget;

"Director."

The term "Director" means the Director of the Bureau of the Budget; and

"Assistant Director."

The term "Assistant Director" means the Assistant Director of the Bureau of the Budget.

TITLE II.—THE BUDGET.

The Budget.

President to send, annually to Congress.

SEC. 201. The President shall transmit to Congress on the first day of each regular session, the Budget, which shall set forth in summary and in detail:

Contents.

Estimates of expenditures and appropriations for ensuing year.

For Congress and Supreme Court without revision.

(a) Estimates of the expenditures and appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year; except that the estimates for such year for the Legislative Branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15th of each year, and shall be included by him in the Budget without revision;

Estimates of receipts for ensuing year.

(b) His estimates of the receipts of the Government during the ensuing fiscal year, under (1) laws existing at the time the Budget is transmitted and also (2) under the revenue proposals, if any, contained in the Budget;

Expenditures and receipts of the last year.

(c) The expenditures and receipts of the Government during the last completed fiscal year;

Estimates of expenditures and receipts of current year.

(d) Estimates of the expenditures and receipts of the Government during the fiscal year in progress;

Amount available November first of current year for expenditures.

(e) The amount of annual, permanent, or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of November 1 of such year;

Condition of Treasury at end of last year, and estimates for current and ensuing years.

(f) Balanced statements of (1) the condition of the Treasury at the end of the last completed fiscal year, (2) the estimated condition of the Treasury at the end of the fiscal year in progress, and (3)

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the estimated condition of the Treasury at the end of the ensuing fiscal year if the financial proposals contained in the Budget are adopted;

Government indebtedness.

(g) All essential facts regarding the bonded and other indebtedness of the Government; and

Other data of financial condition.

(h) Such other financial statements and data as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition of the Government.

Recommendations to meet deficiency if estimated resources less than proposed expenditures.

SEC. 202. (a) If the estimated receipts for the ensuing fiscal year contained in the Budget, on the basis of laws existing at the time the Budget is transmitted, plus the estimated amounts in the Treasury at the close of the fiscal year in progress, available for expenditure in the ensuing fiscal year, are less than the estimated expenditures for the ensuing fiscal year contained in the Budget, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

Recommendations if proposed expenditures less than estimated resources.

(b) If the aggregate of such estimated receipts and such estimated amounts in the Treasury is greater than such estimated expenditures for the ensuing fiscal year, he shall make such recommendations as in his opinion the public interests require.

Supplemental or deficiency estimates authorized to meet necessary expenses.

SEC. 203. (a) The President from time to time may transmit to Congress supplemental or deficiency estimates for such appropriations or expenditures as in his judgment (1) are necessary on account of laws enacted after the transmission of the Budget, or (2) are otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the Budget.

Reasons for, to accompany.

Recommendations if exceeding estimated resources.

(b) Whenever such supplemental or deficiency estimates reach an aggregate which, if they had been contained in the Budget, would have required the President to make a recommendation under subdivision (a) of section 202, he shall thereupon make such recommendation.

Former arrangements of estimates, etc., continued.

SEC. 204. (a) Except as otherwise provided in this Act, the contents, order, and arrangement of the estimates of appropriations and the statements of expenditures and estimated expenditures contained in the Budget or transmitted under section 203, and the notes and other data submitted therewith, shall conform to the requirements of existing law.

Statements to accompany lump sum estimates.

(b) Estimates for lump-sum appropriations contained in the Budget or transmitted under section 203 shall be accompanied by statements showing, in such detail and form as may be necessary to inform Congress, the manner of expenditure of such appropriations and of the corresponding appropriations for the fiscal year in progress and the last completed fiscal year. Such statements shall be in lieu of statements of like character now required by law.

In lieu of present requirements.

Alternative budget for fiscal year 1923, to be submitted.

SEC. 205. The President, in addition to the Budget, shall transmit to Congress on the first Monday in December, 1921, for the service of the fiscal year ending June 30, 1923, only, an alternative budget, which shall be prepared in such form and amounts and according to such system of classification and itemization as is, in his opinion, most appropriate, with such explanatory notes and tables as may be necessary to show where the various items embraced in the Budget are contained in such alternative budget.

Form, recommendations, etc.

Restriction on submission of estimates, etc., by other officers or employees.

SEC. 206. No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the Government should be met, shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress.

Budget Bureau created in Treasury Department.
Director and Assistant Director for.

SEC. 207. There is hereby created in the Treasury Department a Bureau to be known as the Bureau of the Budget. There shall be in the Bureau a Director and an Assistant Director, who shall be appointed by the President and receive salaries of $10,000 and $7,500 a year, respectively.

Duties of Assistant Director.

The Assistant Director shall perform such duties as the Director may designate, and during the absence or incapacity of the Director or during a vacancy in the office of Director he shall act as Director.

Functions of Bureau.

The Bureau, under such rules and regulations as the President may prescribe, shall prepare for him the Budget, the alternative Budget, and any supplemental or deficiency estimates, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments.

Authority of Director over personnel, expenses, etc.

SEC. 208. (a) The Director, under such rules and regulations as the President may prescribe, shall appoint and fix the compensation of attorneys and other employees and make expenditures for rent in the District of Columbia, printing, binding, telegrams, telephone service, law books, books of reference, periodicals, stationery, furniture, office equipment, other supplies, and necessary expenses of the office, within the appropriations made therefor.

Pay restriction.

(b) No person appointed by the Director shall be paid a salary at a rate in excess of $6,000 a year, and not more than four persons so appointed shall be paid a salary at a rate in excess of $5,000 a year.

Application of civil service laws, etc.

(c) All employees in the Bureau whose compensation is at a rate of $5,000 a year or less shall be appointed in accordance with the civil-service laws and regulations.

Transfer of Federal employees permitted until June 30, 1922.
Vol. 34, p. 449.

(d) The provisions of law prohibiting the transfer of employees of executive departments and independent establishments until after service of three years shall not apply during the fiscal years ending June 30, 1921, and June 30, 1922, to the transfer of employees to the Bureau.

Bureau employees allowed additional pay of $240 a year.
Vol. 41, pp. 649, 1308.

(e) The Bureau shall not be construed to be a bureau or office created since January 1, 1916, so as to deprive employees therein of the additional compensation allowed civilian employees under the provisions of section 6 of the Legislative, Executive, and Judicial Appropriation Act for the fiscal years ending June 30, 1921, and June 30, 1922, if otherwise entitled thereto.

Detailed study by Bureau for securing greater economy and efficiency in public service.

SEC. 209. The Bureau, when directed by the President, shall make a detailed study of the departments and establishments for the purpose of enabling the President to determine what changes (with a view of securing greater economy and efficiency in the conduct of the public service) should be made in (1) the existing organization, activities, and methods of business of such departments or establishments, (2) the appropriations therefor, (3) the assignment of particular activities to particular services, or (4) the regrouping of services. The results of such study shall be embodied in a report or reports to the President, who may transmit to Congress such report or reports or any part thereof with his recommendations on the matters covered thereby.

Report to President of results.
Transmittal to Congress.

Laws relating to preparing receipts and expenditures and estimates for Congress to be codified.
Transmittal by President with recommendations for changes, etc.

SEC. 210. The Bureau shall prepare for the President a codification of all laws or parts of laws relating to the preparation and transmission to Congress of statements of receipts and expenditures of the Government and of estimates of appropriations. The President shall transmit the same to Congress on or before the first Monday in December, 1921, with a recommendation as to the changes which, in his opinion, should be made in such laws or parts of laws.

Estimates to be compiled.
R. S., sec. 3669, p. 723.

SEC. 211. The powers and duties relating to the compiling of estimates now conferred and imposed upon the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury are transferred to the Bureau.

Information to Congress when requested.

SEC. 212. The Bureau shall, at the request of any committee of either House of Congress having jurisdiction over revenue or appropriations, furnish the committee such aid and information as it may request.

Departments, etc., to furnish information to Bureau.
Access to records, etc., for examination.

SEC. 213. Under such regulations as the President may prescribe, (1) every department and establishment shall furnish to the Bureau such information as the Bureau may from time to time require, and (2) the Director and the Assistant Director, or any employee of the Bureau when duly authorized, shall, for the purpose of securing such information, have access to, and the right to examine, any books, documents, papers, or records of any such department or establishment.

Budget officers of departments, etc., to prepare estimates thereof.

SEC. 214. (a) The head of each department and establishment shall designate an official thereof as budget officer therefor, who, in each year under his direction and on or before a date fixed by him, shall prepare the departmental estimates.

Supplemental, etc., estimates.

(b) Such budget officer shall also prepare, under the direction of the head of the department or establishment, such supplemental and deficiency estimates as may be required for its work.

Revision and submission by heads of departments, etc.
Preparation in case of failure.

SEC. 215. The head of each department and establishment shall revise the departmental estimates and submit them to the Bureau on or before September 15 of each year. In case of his failure so to do, the President shall cause to be prepared such estimates and data as are necessary to enable him to include in the Budget estimates and statements in respect to the work of such department or establishment.

Form, etc., of estimates to be prescribed.

SEC. 216. The departmental estimates and any supplemental or deficiency estimates submitted to the Bureau by the head of any department or establishment shall be prepared and submitted in such form, manner, and detail as the President may prescribe.

Appropriation for establishing, etc., Bureau.

SEC. 217. For expenses of the establishment and maintenance of the Bureau there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $225,000, to continue available during the fiscal year ending June 30, 1922.

TITLE III.—GENERAL ACCOUNTING OFFICE.

General Accounting Office.
Created as an independent establishment, under Comptroller General.

SEC. 301. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States.

Offices of Comptroller of the Treasury and Assistant, abolished.

The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished, to take effect July 1, 1921.

Personnel, records, equipment, etc., assigned to General Accounting Office.

All other officers and employees of the office of the Comptroller of the Treasury shall become officers and employees in the General Accounting Office at their grades and salaries on July 1, 1921, and all books, records, documents, papers, furniture, office equipment and other property of the office of the Comptroller of the Treasury shall become the property of the General Accounting Office.

Seal of Office.

The Comptroller General is authorized to adopt a seal for the General Accounting Office.

Comptroller General and Assistant to be appointed.
Salaries.
Duties of Assistant.

SEC. 302. There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate, and shall receive salaries of $10,000 and $7,500 a year, respectively. The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in that office, shall act as Comptroller General.

Tenure of office, etc.

SEC. 303. Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold

Method and sole causes for removal specified.

Reappointment forbidden.

Age retirement.

office for fifteen years. The Comptroller General shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner herein provided shall be ineligible for reappointment to that office. When a Comptroller General or Assistant Comptroller General attains the age of seventy years, he shall be retired from his office.

Duties of Comptroller of the Treasury, the Auditors, and of personal ledger accounts by Bookkeeping, etc., Division, vested independently in Accounting Office.

Finality of certified balances.

Revision of auditors' settlements after July 1, 1921, discontinued.

SEC. 304. All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921.

Postal service.
Bureau of Accounts, Post Office Department, created for administrative examination of accounts.
Comptroller for, to be appointed.

Duties to be performed.

Salary of Auditor transferred.
Vol. 41, p. 1260.

Transfer of personnel.

Appropriations transferred.

Vol. 41, pp. 1269, 1273.

The administrative examination of the accounts and vouchers of the Postal Service now imposed by law upon the Auditor for the Post Office Department shall be performed on and after July 1, 1921, by a bureau in the Post Office Department to be known as the Bureau of Accounts, which is hereby established for that purpose. The Bureau of Accounts shall be under the direction of a Comptroller, who shall be appointed by the President with the advice and consent of the Senate, and shall receive a salary of $5,000 a year. The Comptroller shall perform the administrative duties now performed by the Auditor for the Post Office Department and such other duties in relation thereto as the Postmaster General may direct. The appropriation of $5,000 for the salary of the Auditor for the Post Office Department for the fiscal year 1922 is transferred and made available for the salary of the Comptroller, Bureau of Accounts, Post Office Department. The officers and employees of the Office of the Auditor for the Post Office Department engaged in the administrative examination of accounts shall become officers and employees of the Bureau of Accounts at their grades and salaries on July 1, 1921. The appropriations for salaries and for contingent and miscellaneous expenses and tabulating equipment for such office for the fiscal year 1922, and all books, records, documents, papers, furniture, office equipment, and other property shall be apportioned between, transferred to, and made available for the Bureau of Accounts and the General Accounting Office, respectively, on the basis of duties transferred.

Public accounts.
R. S., sec. 236, p. 39, amended.

Settlement and adjustment thereof by General Accounting Office.

SEC. 305. Section 236 of the Revised Statutes is amended to read as follows:

"SEC. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

General administrative laws applicable.

Effect of copies of records, etc., as evidence.

SEC. 306. All laws relating generally to the administration of the departments and establishments shall, so far as applicable, govern the General Accounting Office. Copies of any books, records, papers, or documents, and transcripts from the books and proceedings of the

General Accounting Office, when certified by the Comptroller General or the Assistant Comptroller General under its seal, shall be admitted as evidence with the same effect as the copies and transcripts referred to in sections 882 and 886 of the Revised Statutes.

R. S., secs. 882, 886, p. 187.

Adjustable claims etc., to be paid through disbursing officers.

SEC. 307. The Comptroller General may provide for the payment of accounts or claims adjusted and settled in the General Accounting Office, through disbursing officers of the several departments and establishments, instead of by warrant.

Specified duties transferred from Public Moneys Division to Bookkeeping, etc., Division.

SEC. 308. The duties now appertaining to the Division of Public Moneys of the Office of the Secretary of the Treasury, so far as they relate to the covering of revenues and repayments into the Treasury, the issue of duplicate checks and warrants, and the certification of outstanding liabilities for payment, shall be performed by the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury.

Administrative procedure for accounting, etc., to be prescribed.

SEC. 309. The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

Offices of auditors abolished.
Personnel, etc., transferred to Accounting Office.

SEC. 310. The offices of the six auditors shall be abolished, to take effect July 1, 1921. All other officers and employees of these offices except as otherwise provided herein shall become officers and employees of the General Accounting Office at their grades and salaries on July 1, 1921. All books, records, documents, papers, furniture, office equipment, and other property of these offices, and of the Division of Bookkeeping and Warrants, so far as they relate to the work of such division transferred by section 304, shall become the property of the General Accounting Office. The General Accounting Office shall occupy temporarily the rooms now occupied by the office of the Comptroller of the Treasury and the six auditors.

Temporary office rooms assigned.

Appointment, etc., of employees by Comptroller General.

SEC. 311. (a) The Comptroller General shall appoint, remove, and fix the compensation of such attorneys and other employees in the General Accounting Office as may from time to time be provided for by law.

Application of civil service laws.

(b) All such appointments, except to positions carrying a salary at a rate of more than $5,000 a year, shall be made in accordance with the civil-service laws and regulations.

Pay restrictions.

(c) No person appointed by the Comptroller General shall be paid a salary at a rate of more than $6,000 a year, and not more than four persons shall be paid a salary at a rate of more than $5,000 a year.

Assignment of duties.

(d) All officers and employees of the General Accounting Office, whether transferred thereto or appointed by the Comptroller General, shall perform such duties as may be assigned to them by him.

Authority of employees specially designated.

(e) All official acts performed by such officers or employees specially designated therefor by the Comptroller General shall have the same force and effect as though performed by the Comptroller General in person.

Regulations, etc., authorized.

(f) The Comptroller General shall make such rules and regulations as may be necessary for carrying on the work of the General Accounting Office, including rules and regulations concerning the admission of attorneys to practice before such office.

Comptroller General. Investigation by, of all matters relating to public funds.

SEC. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application

Recommendations by, to Congress to facilitate accurate rendition of accounts, etc.

For greater economy and efficiency in public expenditures.

of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

Special investigations, etc., when ordered by Congress or committees thereof.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

Special reports of violations of law by departments, etc.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

Report if departmental examination and inspection of accounts adequate, etc.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

Information to Budget Bureau when requested.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time.

Departments to furnish information of their activities, etc.

SEC. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

Access to records, etc.

Diplomatic emergencies excepted.
R. S. sec. 291, p. 49.

Eligible list of accountants to be established.

SEC. 314. The Civil Service Commission shall establish an eligible register for accountants for the General Accounting Office, and the examinations of applicants for entrance upon such register shall be based upon questions approved by the Comptroller General.

Transfer of appropriations for offices herein abolished.
Vol. 41, pp. 1268, 1269.

SEC. 315. (a) All appropriations for the fiscal year ending June 30, 1922, for the offices of the Comptroller of the Treasury and the six auditors, are transferred to and made available for the General Accounting Office, except as otherwise provided herein.

Changes in transferred personnel, etc., authorized during fiscal year.

(b) During such fiscal year the Comptroller General, within the limit of the total appropriations available for the General Accounting Office, may make such changes in the number and compensation of officers and employees appointed by him or transferred to the General Accounting Office under this Act as may be necessary.

Proportionate share of appropriations for rent, contingent expenses, etc., Treasury Department, 1922, transferred.

(c) There shall also be transferred to the General Accounting Office such portions of the appropriations for rent and contingent and miscellaneous expenses, including allotments for printing and binding, made for the Treasury Department for the fiscal year ending June 30, 1922, as are equal to the amounts expended from similar appropriations during the fiscal year ending June 30, 1921, by the Treasury Department for the offices of the Comptroller of the Treasury and the six auditors.

Appropriations made available for Accounting Office.

(d) During the fiscal year ending June 30, 1922, the appropriations and portions of appropriations referred to in this section shall be available for salaries and expenses of the General Accounting Office, including payment for rent in the District of Columbia, traveling expenses, the purchase and exchange of law books, books of reference, and for all necessary miscellaneous and contingent expenses.

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Employees allowed additional pay of $240 a year.
Vol. 41, p. 1308.

SEC. 316. The General Accounting Office and the Bureau of Accounts shall not be construed to be a bureau or office created since January 1, 1916, so as to deprive employees therein of the additional compensation allowed civilian employees under the provisions of section 6 of the Legislative, Executive, and Judicial Appropriation Act for the fiscal year ending June 30, 1922, if otherwise entitled thereto.

Transfer of department, etc., employees permitted until June 30, 1922.
Vol. 34, p. 449.

SEC. 317. The provisions of law prohibiting the transfer of employees of executive departments and independent establishments until after service of three years shall not apply during the fiscal year ending June 30, 1922, to the transfer of employees to the General Accounting Office.

Immediate effect of Act.
Proviso.
Accounting Office, etc., on July 1, 1921.

SEC. 318. This Act shall take effect upon its approval by the President: *Provided*, That sections 301 to 317, inclusive, relating to the General Accounting Office and the Bureau of Accounts, shall take effect July 1, 1921.

Approved, June 10, 1921.

June 10, 1921.
[H. R. 80.]
[Public, No. 14.]

CHAP. 19.—An Act For the public sale of post-office site on the west side of South Main Street, in the city of Bethlehem, Pennsylvania.

Bethlehem, Pa.
Public building at, to be sold.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to sell at public sale the post-office site and buildings thereon erected, situate on the west side of South Main Street, in the city of Bethlehem, Pennsylvania, after proper advertisement, and at such time and upon such terms as he may deem for the best interests of the United States, for a sum not less than $20,000, and to execute and deliver to the purchaser the usual quit-claim deed therefor, and to deposit the proceeds derived from such sale in the Treasury of the United States as a miscellaneous receipt.

Deposit of proceeds.

Approved, June 10, 1921.

June 10, 1921.
[H. R. 6467.]
[Public, No. 15.]

CHAP. 20.—An Act To amend section 407 of the Transportation Act of 1920.

Transportation Act, 1920.
Vol. 41, p. 482, amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 407 of the Transportation Act of 1920 be, and it is hereby, amended by adding thereto a new paragraph designated as paragraph (9), as follows:

Telephone companies permitted to consolidate, etc.

"(9) Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this Act, the commission shall fix a time and place for a public hearing upon such application and shall thereupon give reasonable notice in writing to the governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State public service commission or other regulatory body, if any, having jurisdiction over telephone companies, and to such other persons as it may deem advisable. After such public hearing, if the commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any Act or Acts of Congress making the proposed transaction un-

Public hearing of applications.

Certificate authorizing.

§ 703. Comptroller General and Deputy Comptroller General

(a)(1) The Comptroller General and Deputy Comptroller General are appointed by the President, by and with the advice and consent of the Senate.

(2) When a vacancy occurs in the office of Comptroller General or Deputy Comptroller General, a commission is established to recommend individuals to the President for appointment to the vacant office. The commission shall be composed of—

(A) the Speaker of the House of Representatives;

(B) the President pro tempore of the Senate;

(C) the majority and minority leaders of the House of Representatives and the Senate;

(D) the chairmen and ranking minority members of the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House; and

(E) when the office of Deputy Comptroller General is vacant, the Comptroller General.

(3) A commission established because of a vacancy in the office of the Comptroller General shall recommend at least 3 individuals. The President may ask the commission to recommend additional individuals.

(b) Except as provided in subsection (e) of this section, the term of the Comptroller General is 15 years. The Comptroller General may not be reappointed. The term of the Deputy Comptroller General expires on the date an individual is appointed Comptroller General. The Deputy Comptroller General may continue to serve until a successor is appointed.

(c) The Deputy Comptroller General—

(1) carries out duties and powers prescribed by the Comptroller General; and

(2) acts for the Comptroller General when the Comptroller General is absent or unable to serve or when the office of Comptroller General is vacant.

(d) The Comptroller General shall designate an officer or employee of the General Accounting Office to act as Comptroller General when the Comptroller General and Deputy Comptroller General are absent or unable to serve or when the offices of Comptroller General and Deputy Comptroller General are vacant.

(e)(1) A Comptroller General or Deputy Comptroller General retires on becoming 70 years of age. Either may be removed at any time by—

(A) impeachment; or

(B) joint resolution of Congress, after notice and an opportunity for a hearing, only for—

(i) permanent disability;

(ii) inefficiency;

(iii) neglect of duty;

(iv) malfeasance; or

(v) a felony or conduct involving moral turpitude.

(2) A Comptroller General or Deputy Comptroller General removed from office under paragraph (1) of this subsection may not be reappointed to the office.

(f) The annual rate of basic pay of the—

(1) Comptroller General is equal to the rate for le II of the Executive Schedule; and

(2) Deputy Comptroller General is equal to the rate for level III of the Executive Schedule.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 888.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
703(a)(1)	31:42(a) (1st sentence words after comma).	June 10, 1921, ch. 18, § 302(a) (1st sentence words after 1st comma, last sentence); 42 Stat. 23; Apr. 3, 1980, Pub.L. 96–226, § 104(a), 94 Stat. 314.
703(a)(2), (3)	31:42(b).	June 10, 1921, ch. 18, 42 Stat. 20, § 302(b); added Apr. 3, 1980, Pub.L. 96–226, § 104(a), 94 Stat. 314.
703(b)	31:43 (1st par. 1st, 2d sentence).	June 10, 1921, ch. 18, § 303 (1st par.); 42 Stat. 23; Apr. 3, 1980, Pub.L. 96–226, § 104(b)(1), 94 Stat. 315.
703(c)	31:42(a) (last sentence).	
703(d)	31:43a.	June 27, 1944, ch. 286, § 101 (last par. on p. 371), 58 Stat. 371.
703(e)	31:43 (1st par. 3d–last sentences).	
703(f)	31:42a.	Aug. 14, 1964, Pub.L. 88–426, § 203(a), (b), 78 Stat. 415; Dec. 16, 1967, Pub.L. 90–206, § 219(1), 81 Stat. 639; restated Aug. 9, 1975, Pub.L. 94–82, § 204(b), 89 Stat. 421.

Explanatory Notes

In subsections (a)(1), (b), (d), and (e), the word "Deputy" is substituted for "Assistant" because of section 101 of the Act of July 9, 1971 (Pub.L. 92–51, 85 Stat. 143).

In subsection (a)(1), the words "The Comptroller General and Deputy Comptroller General" are added because of the restatement. The words "by and" are added for consistency. The words "and shall receive salaries of $10,000 and $7,500 a year, respectively" in section 302(a) (1st sentence words after 2d comma) of the Budget and Accounting Act, 1921 (ch. 18, 42 Stat. 23), are omitted as superseded by subsection (f) of this section.

In subsection (a)(2), before clause (A), the words "after April 3, 1980" are omitted as executed. In clause (E), the words "of the United States" are omitted as surplus.

In subsection (a)(3), the words "because of a vacancy in the office of the Comptroller General" are substituted for "under paragraph (1)" for clarity. The word "recommend" is substituted for "submit" and "submitted" for consistency. The words "to the President for consideration the names of", "for the Office of Comptroller General", and "within his discretion" are omitted as surplus.

In subsection (b), the words "the term of . . . is 15 years" are substituted for "shall hold office for fifteen years" for consistency. The words "eligible for" are omitted as surplus. The words "the term of . . . expires on" are substituted for "shall hold office from the date of his appointment until" to eliminate unnecessary words and for consistency. The words "to fill a vacancy in the Office of" are omitted as surplus.

In subsection (c), the words "carries out duties and powers prescribed" are substituted for "perform such duties as may be assigned" for consistency. The words "to him" are omitted as surplus.

In subsection (d), the words "officer or" are added for consistency in the revised title. The text of section 101 (last par. on p. 371 words before colon) of the Act of June 27, 1944 (ch. 286, 58 Stat. 371), is omitted as expired.

In subsection (e)(1), before clause (A), the words "from his office" are omitted as surplus. In clause (A), the words "and for no other cause and in no other manner" are omitted as surplus. In clause (B), before subclause (i), the words "opportunity for a" are added for consistency. The words "guilty of" are omitted as surplus. In subclause (i), the word "disability" is substituted for "incapacitated" for consistency in the chapter and with title 5 [Title 5, Government Organization and Employees]. In subclause (iv), the words "in office" are omitted as surplus.

In subsection (e)(2), the words "from office" are added for clarity.

U.S. Constitution
Art. 2, § 2, cl. 2

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, providing two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.